United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL 76-1210

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

AL TAYLOR, WILLIAM TURNER, CHARLES RAMSEY, RUFUS WESLEY, HENRY SALLEY and AL GREEN,

Appellants.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

VOLUME I
Pages JA-1 through JA-336

HARRY R. POLLAK
Attorney for Henry Salley
299 Broadway
New York, N.Y. 10007
(212) BE 3-0386

HAROLD SCHWARTZ
Attorney for Al Green
Suite 911
16 Court Street
Brooklyn, New York 11241
(212) 596-7374

JOHN CIAMPA
Attorney for Al Taylor
785 West End Avenue
New York, N.Y. 10025
(212) 663-6429

LAWRENCE LEVNER
Attorney for Charles Ramsey
521 Fifth Avenue
New York, N.Y. 10017
(212) MU 7-4640

ELEANOR JACKSON PIEL
Attorney for Rufus Wesley
36 West 44th Street
New York, N.Y. 10036
(212) MU 2-8288

UNITED STATES COURT OF APPEALS
FILED
SEP 7 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

Printinghouse Press – Bar Ass'n Steno Serv. (Appeals Section) 212-687-0384

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries	JA-1
Judgment of Conviction - Al Taylor	JA-4
Judgment of Conviction - Charles Ramsey	JA-6
Judgment of Conviction - Rufus Wesley, a/k/a "Folks"	JA-8
Judgment of Convidtion - Henry Salley	JA-10
Judgment of Conviction - Al Green	JA-12
Indictment	JA-14
Charge of the Court	JA-27
References Supporting Brief of Al Taylor	JA-96
References Supporting Brief of Charles Ramsey	JA-178
References Supporting Brief of Rufus Wesley	JA-337
Questions to be Asked of Prospective Jurors as Requested by Defendant Rufus Wesley	JA-338
Selected Requests to Instruct Offered by Defendant Wesley	JA-440
References Supporting Brief of Henry Salley	JA-449
References Supporting Brief of Al Green	JA-472
Government's Bill of Particulars	JA-473
Indictment U.S. v. Tramunti	JA-482
Government's Bill of Particulars - U.S. v. Tramunti.	JA-495
Government's Supplemental Bill of Particulars -U.S.v. Tramunti	JA-505
Request to Charge	JA-564

RELEVANT DOCKET ENTRIES

DATE	Robinson-1; Taylor-2;Turner-3;Ferguson-4;March-5;Ramsey-6; Wesley-7;Ellis-8;Smith-9;Tate-10;Salley-11;La Salata-12; Barber-13;Hansen-14;Green-15;Miller-16;Sweeney-17.
11-18-75	Filed indictment. Superseding 75 Cr .88 and referred to Duffy,J.
11-20-75	Pre-trial conf. held Court enters plea of not guilty..Trial 1-21-76
1-24-75	Filed notice of appearance by Israel Beckhardt 666 Fifth Ave. NYC 265-1800
12-22-75	Conference held - No counsel present. Deft instructed to report to Magistrate for assignment of counsel...Duffy,J.
12-29-75	Filed notice of motion for a bill of particulars, for discovery and for a severance..
1-8-76	Filed memo endorsed on motion filed 12-29-75...Motion is granted as to items #3,4 & 5 in all other respects it is denied....Duffy,J...m/n
1-19-76	Filed affdvt. & notice of motion to dismiss the indictment...
1-21-76	Bench warrant ordered...
1-22-76	Filed memo endorsed on motion filed 1-19-76 ***The motion to dismiss is denied....Duffy,J...m/n
1-26-76	Trial begun with ~~xx~~ jury selection and adj'd to 1-29-76... Ct.2 is to be bifurcated from the trial.
1-27-76	Filed notice of appearance by Eleanor Jackson Piel [illegible] New York 10036 582-8288
1-29-76	Trial cont'd.
1-30-76	Trial cont'd.
2-3-76	Trial cont'd with jury selection.
2-4-76	Trial cont'd. Prior to jury being sworn and w/o jury present. Deft. Warren Robinson's motion for a severance Granted case will proceed to trial with 12 defts. Request by certain defense counsel to proceed to trial w/o a jury denied for lack of majority. JURY EMPANELLED & SWORN.
2-5-76	Trial cont'd. writ satisfied as to W.Robinson.
2-6-76	NO TRIAL DAY
2-9-76	Trial cont'd. Deft. Al Green not present-Defense counsel waives defts presence.
2-10-76	Trial cont'd. (8)
2-11-76	Trial cont'd.
2-12-76	Trial cont'd.
2-13-76	Trial cont'd. (11)
2-17-76	Trial cont'd. A.M. Deft. Barber not present..defense counsel waives defts presence - p.m. R Rufus Wesley not present - excused until 2-19-76 defense waives presence...

BEST COPY AVAILABLE

2-18-76	Trial cont d. Deft William Turner moves to act as counsel on his own behalf Motion Granted. Defense counsel Jerold Weisfeld to remain as advisor to Turner
2-19-76	Trial cont d.
2-20-76	Trial cont d.
2-23-76	Trial cont d. All defts move for a mistrial"Decision Reserved)
2-24-76	Trial cont'd. Motion made by all defts for a mistrial-DENIED...All defts move to dismiss Indictment...Decision reserved
2-25-76	Trial cont'd. Motion to dismiss denied
2-26-76	Trial cont'd
2-27-76	z No Trial day
3-1-76	Trial cont'd. (20)

3-2-76 - Trial cont'd.
3-3-76 - Identification hearing begun & concluded - Motion to suppress identification...Denied..Trial cont'd.
3-4-76 Trial cont'd.
3-5-76 Trial cont'd. (24)

3-8-76 - Trial cont d.
3-9-76 - Trial cont d.
3-10-76 - Trial cont d.
3-11-76 - Trial cont d. Deft E.Barber not present B.W.ordered.
3-12-76 - Trial cont d. (29) E.Barber voluntarily appears in Court B.W. vacated...

3-15-76 - Trial cont'd. Govt.Rests
3-16-76 - Trial cont'd.
3-17-76 - Trial cont'd.
3-18-76 - Trial cont'd.
3-19-76 - Trial cont'd. (34)

Date	Date	(c) Ltr. Code	(d) Total Days

Mar. 22, 1976 - Trial Continued
Mar. 23, 1976 - No Trial Date
Mar. 24, 1976 - Trial Continued. Govt. Summations
WALTER J. SMITH - Bail Revoked
(status prior R.O.R) Deft. REMANDED
Mar.25,1976 - Trial Continued - Defense Summations.
Mar.26,1976 - Trial Continued - Defense Summations cont'd.
Mar.29,1976 - Trial Continued - Defense Summations cont'd.
RUFUS WESLEY - Bail revoked (status R.O.R.)
BENCH WARRANT ORDERED. Deft. REMANDED

4-5-76	Filed Writ of H/C ad Pros. with marshals return.
4-6-76	Filed defts requests to charge
***	
3-30-76	Trial cont'd.....Remanded.
3-31-76	Trial cont'd.
4-1-76	Trial cont'd.
4-2-76	Trial cont'd. and concluded....Partial verdict..Ct.1..GUILTY Ct.4 NOT GUILTY
	Ct.5 GUILTY Writ adjd to date of sentencing 4-30-76 (43 days)
	Pre-sent. investigation ordered...

4-13-76	Filed transcript of record of proceedings, dated 11-21-75
4-28-76	Filed endorsement on letter from atty.Piel dtd.4-14-76...The attached motion to set aside the verdict is denied.....Duffy,J.. mailed notice..
4-30-76	F Sent. adjd to May 7, 1976
5-7-76	Filed notice of appeal from Judgment dated 5-7-76...Copy given to U.S.Atty. and Mailed to defts atty.E.J.Piel 36 W. 44th St. NYC 10036 (Wesley)
5-14-76	Filed notice of appeal from Judgement dated 5-14-76 (Salley)
5-14-76	Filed notice of appeal from judgment dated 5-14- 76 (Taylor)
5-21-76	Filed notice of appeal from judgment dated 5-21-76 (Turner)
6-18-76	Filed notice of appeal from judgment dated 6-18-76 (Ramsey)
3-30-76	Trial cont'd.
3-31-76	Trial cont'd.
4-1-76	Trial cont'd
4-2-76	Trial cont'd. and concluded Ct.1 GUILTY...Writ adjd to date of sentencing 4-30-76 Remanded. P.S.I. ordered.
4-13-76	Filed transcript of record of proceedings, dated 11-21-75
4-13-76	Filed notice of motion to set aside the verdict....Memo endorsed. Motion Denied... Duffy,J....mailed notice..
4-30-76	Sent. adjd ...No date set...Duffy,J.
6-16-76	Filed 1 manila envelope contents ordered sealed and placed in vault in Clerks office.....Duffy,J.
6-18-76	Filed Judgment(Atty.Lawrence Levner,present)The deft is committed for imprisonment for a period of FIFTEEN YEARS....Pursuant to the provisions of Section 841 of Ti.21, U.S.Code, deft is placed on special parole for a term of THREE YEARS, to commence upon expiration of confinement.....DUFFY, J....Ent. 6-21-76----
6-21-76	Filed notice of appeal from judgment dated 6-18-76..Copy given to U.S.Atty. and to L.H.Levner defts atty. 521 5th Ave. NYC
5-27-76	Filed judgment and commitment (atty. present) The deft. is herby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts 1 and 8 to run CONCURRENTLY with each other. Pursuant to the provisions of Section 841, Title 21,U.S. Code, deft. is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement. Deft. is advised of his right to Appeal. Bail pending appeal is granted in the same amount and under the same conditions as bail presently set..... DUFFY,J. Issued Commitment. 5-27-76.

JUDGMENT OF CONVICTION
AL TAYLOR

United States of America vs.

United States District Court for

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: AL TAYLOR

DOCKET NO.: 75 Crim. 1112

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date: MONTH MAY DAY 14, YEAR 1976

COUNSEL

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XX] WITH COUNSEL John Ciampa (Name of counsel)

PLEA

Defendant having admitted that he was previously convicted on ONE (1) separate Federal Narcotics Conviction, & he is subjected to sentence as a 2nd Narcotics Offende

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [XX] NOT GUILTY

FINDING & JUDGMENT

There being Jury/verdict of [ ] NOT GUILTY. Defendant is discharged; [XX] GUILTY, as charged.

Defendant has been convicted as charged of the offense(s) of Conspiracy to violate the Federal Narcotic Laws by intentionally and knowingly distributing and possessing with intent to distribute Schedule I and II Narcotic Drug controlled Substances.

(Title 21, U.S. Code, Section 846.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

EIGHT (8) YEARS on count 1 as charged.

Pursuant to the provisions of Section 841 of Title 21, U.S. Code, defendant is placed on Special Parole for a term of SIX (6) YEARS, to commence upon expiration of confinement.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or any qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE 5/14/76

BY _____ CLERK / DEPUTY

SIGNED BY

[XX] U.S. District Judge

[ ] U.S. Magistrate

KEVIN THOMAS DUFFY

Date May 14, 1976

File

JUDGMENT OF CONVICTION
CHARLES RAMSEY

United States District Court

United States of America vs.

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT CHARLES RAMSEY

DOCKET NO. 75 Crim. 1112

[redacted]

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: June DAY: 16, YEAR: [illegible]

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XX] WITH COUNSEL Lawrence Lorner (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [XX] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ Jury verdict of [ ] NOT GUILTY. Defendant is discharged [XX] GUILTY, on ct. 1 as charged.

Defendant has been convicted as charged of the offense(s) of Conspiracy to violate the Federal Narcotic Laws.

(Title 21, U.S. Code, Section 846.)

U. S. DISTRICT COURT FILED JUL 14 1976 S. D. OF N. Y.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FIFTEEN (15) YEARS.

Pursuant to the provision of Section 841 of Title 21, U.S. Code, defendant is placed on special parole for a term of THREE (3) YEARS, to commence upon expiration of confinement.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out o reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, a any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and r probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk del a certified copy of this judgme and commitment to the U.S. M shal, or other qualified officer.

CERTIFIED AS A TRUE COPY

THIS DATE June 10, 1

By

SIGNED BY

[XX] U.S. District Judge

[ ] U.S. Magistrate

KEVIN THOMAS DUFFY

Date June 10, 1976

10/1-76 S/WY

JUDGMENT OF CONVICTION
RUFUS WESLEY, a/k/a "Folks"

United States of America vs.

United States District Court for

DEFENDANT: RUFUS WESLEY, a/k/a "Folks"

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.: 75 Crim. 1132

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: May DAY: 7, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XX] WITH COUNSEL Eleanor Jackson Peel (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a Jury verdict of

[XX] NOT GUILTY on ct. 4 only.

[XX] GUILTY on cts. 1 & 5 only.

Defendant has been convicted as charged of the offense(s) of unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, heroin, and conspiracy so to do.

(Title 21, Sections 173 & 174; Title 21, Section 846; Title 21, Sections 812, 841(a)(1) and 841(b)(1)(A).) United States Code.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

EIGHT (8) YEARS on each of counts 1 & 5, each count to run concurrently with each other.

Pursuant to the provisions of Title 21, Section 841, United States Code, the defendant is placed on Special Parole for a term of Three (3) Years to commence upon expiration of confinement.

SPECIAL CONDITIONS OF PROBATION

Judgment of Conviction
Rufus Wesley, a/k/a "Folks"

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE _____

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

( ) CLERK

( ) DEPUTY

SIGNED BY

(XX) U.S. District Judge

( ) U.S. Magistrate

KEVIN THOMAS DUFFY

File

Date May 7, 1976

JUDGMENT OF CONVICTION
HENRY SALLEY

United States of America vs.

United States District Court for

DEFENDANT: HENRY SALLEY

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. 75 Crim 1112

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (9/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: MAY DAY: 14, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XX] WITH COUNSEL Harry Pollak (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [XX] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ Jury verdict of

[XX] NOT GUILTY. [redacted] on count 11.

[XX] GUILTY, on count 1.

Defendant has been convicted as charged of the offense(s) of Conspiracy to violate the Federal Narcotic Laws by intentionally and knowingly distributing and possessing with intent to distribute Schedule I and II Narcotic Drug Controlled Substances.

(Title 21, U.S. Code, Section 846.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FIVE (5) YEARS on count 1. Defendant to be credited with all time previously served.

Pursuant to the provisions of Section 841, Title 21, U.S. Code, defendant is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement.

Defendant continued on present bail ($10,000. secured by $1,000. cash) pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE 5/14/76

( ) CLERK
( ) DEPUTY

SIGNED BY

[XX] U.S. District Judge

[ ] U.S. Magistrate

KEVIN THOMAS DUFFY

File

Date May 14, 1976

JUDGMENT OF CONVICTION
AL GREEN

-AL GREEN-

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH: May DAY: 27, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Harold Schwartz
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [XX] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ Jury/verdict of
[ ] NOT GUILTY. Defendant is discharged
[XX] GUILTY, as charged on counts 1 & 8.

Defendant has been convicted as charged of the offense(s) of Conspiracy to violate the Federal Narcotic Laws in that he unlawfully distributed and possessed with intent to distribute a Schedule I Narcotic Drug Controlled Substance.

(Title 21, U.S. Code, Sections 846, 812, 841(a)(1), 841(b)(1)(A).)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT(8) YEARS on each of counts 1 and 8 to run CONCURRENTLY with each other.

Pursuant to the provisions of Section 841, Title 21, U.S. Code, defendant is placed on Special Parole for a term of THREE(3)YEARS to commence upon expiration of confinement.

Defendant is advised of his right to Appeal.

Bail pending appeal is granted in the same amount and under the same conditions as bail presently set.

SPECIAL CONDITIONS OF PROBATION

MICROFILM
MAY

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FILED
MAY 27 1976
S.D. OF N.Y.

SIGNED BY

[XX] U.S. District Judge

[ ] U.S. Magistrate

Kevin Thomas Duffy
KEVIN THOMAS DUFFY

Date May 27, 1976

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
- v -	INDICTMENT
WARREN ROBINSON, a/k/a "Alan", AL TAYLOR, WILLIAM TURNER, a/k/a "Dog", BRYANT FERGUSON, JAMES MARCH, a/k/a "Bubbles", CHARLES RAMSEY, RUFUS WESLEY, a/k/a "Folks", DORETHEA ANN ELLIS, a/k/a "Dorethea Lane", WALTER JOHN SMITH, a/k/a "Doc", a/k/a "Roger", CECIL TATE, a/k/a "Little Pete", HENRY SALLEY, JOSEPH LA SALATA, a/k/a "Joe Sharp", ERNESTINE BARBER, BASIL HANSEN, AL GREEN, ARHELIA MILLER, a/k/a "Pinky", RONALD SWEENEY, a/k/a "Garbage Man",	S 75 Cr. 1112
Defendants.	

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1969 and continuously thereafter up to and including December 6, 1973, in the Southern District of New York and elsewhere, AL TAYLOR, WILLIAM TURNER, a/k/a "Dog", BRYANT FERGUSON, JAMES MARCH, a/k/a "Bubbles", CHARLES RAMSEY, RUFUS WESLEY,

a/k/a "Folks", DORETHEA ANN ELLIS, a/k/a "Dorethea Lane", WALTER JOHN SMITH, a/k/a "Doc", a/k/a "Roger", CECIL TATE, a/k/a "Little Pete", HENRY SALLEY, JOSEPH LA SALATA, a/k/a "Joe Sharp", ERNESTINE BARBER, BASIL HANSEN, AL GREEN, ARHELIA MILLER, a/k/a "Pinky", and RONALD SWEENEY, a/k/a "Garbage Man", the defendants, and Warren Robinson and Frank Pugliese, a/k/a "Georgie", a/k/a "Butch", named in Count One as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Secions 173, 174, 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was a part of said conspiracy that, prior to May 1, 1971, the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedules I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about March, 1971, the defendant AL TAYLOR received approximately one ounce of heroin from co-conspirator Warren Robinson, a/k/a "Alan."

2. In or about April, 1971, the defendant AL TAYLOR and co-conspirator Warren Robinson, a/k/a "Alan" met in the vicinity of 12th and U Streets, N.W., Washington, D.C.

3. On or about June 13, 1971, defendant DORETHEA ANN ELLIS, a/k/a "Dorethea Lane", transported a quarter kilogram of cocaine from New York, New York to the vicinity of Jefferson and 9th Streets, N.W., Washington, D.C.

4. In or about June, 1971, the defendant RONALD SWEENEY, a/k/a "Garbage Man", received approximately one ounce of heroin in an apartment in the vicinity of 11th and N Streets, N.W., Washington, D.C.

5. In or about July, 1971, the defendant DORETHEA

ANN ELLIS, a/k/a "Dorothea Lane", received some money from co-conspirator Frank Pugliese, a/k/a "Georgie", a/k/a "Butch."

6. In or about August, 1971, the defendant WALTER JOHN SMITH, a/k/a "Doc", a/k/a "Roger" delivered a case of lactose at 1516 9th Street, N.W., Washington, D.C.

7. In or about August 1971, defendant RUFUS WESLEY, a/k/a "Folks," and co-conspirator Warren Robinson, a/k/a "Alan," cut and packaged approximately one-half of a kilogram of heroin in Washington, D.C.

8. In or about August 1971, defendant RUFUS WESLEY ,a/k/a "Folks," and co-conspirator Warren Robinson, a/k/a "Alan," received approximately one-half of a kilogram of heroin in the vicinity of Co-op City, Bronx, New York.

9. On or about September 1, 1971, defendant RUFUS WESLEY, a/k/a "Folks," transported approximately one-half of a kilogram of heroin from Bronx, New York to Washington, D.C.

10. In or about September, 1971, the defendant WALTER JOHN SMITH, a/k/a "Doc," a/k/a "Roger" delivered a case of lactose in the vicinity of Florida Avenue and P Streets, N.W., Washington, D.C.

11. In or about September, 1971, the defendant JOSEPH LA SALATA, a/k/a "Joe Sharp," met with co-conspirator Frank Pugliese, a/k/a "Georgie," a/k/a "Butch" in Izzy's Luncheonette, Westchester Avenue, Bronx, New York.

12. In or about September, 1971, the defendant

ARHELIA MILLER, a/k/a "Pinky" received approximately one kilogram of heroin in the McAlpin Hotel, Broadway and 34th Street, New York, New York.

13. In or about September, 1971, defendant BRYANT FERGUSON traveled from Washington, D.C. to New York, New York.

14. In or about October, 1971, defendant RUFUS WESLEY a/k/a "Folks" transported approximately one kilogram of heroin from Ridgefield Park, New Jersey to Washington, D.C.

15. In or about October, 1971, the defendant CHARLES RAMSEY received approximately one kilogram of heroin from co-conspirator Warren Robinson in Silver Spring, Maryland.

16. In or about November, 1971, the defendant JOSEPH LA SALATA, a/k/a "Joe Sharp", delivered, on four occasions, one-eighth kilogram packages of heroin in the vicinity of Zulette Avenue, Bronx, New York.

17. In or about November, 1971, the defendant ARHELIA MILLER, a/k/a "Pinky" delivered quantities of money in brown paper bags to co-conspirator Warren Robinson, a/k/a "Alan", in Silver Spring, Maryland.

18. In or about January, 1972, the defendant AL GREEN received a quantity of heroin at 1380 University Avenue, Bronx, New York.

19. In or about January, 1972, defendant BRYANT

FERGUSON and co-conspirator Warren Robinson, a/k/a "Alan" boarded an Eastern Airlines "shuttle" airplane with a kilogram of heroin in Queens, New York.

20. In or about January, 1972, the defendants BRYANT FERGUSON, and CECIL TATE a/k/a "Little Pete" delivered a sample of heroin to another person in Washington, D.C.

21. In or about February, 1972, the defendant CHARLES RAMSEY delivered approximately one and a half ounces of heroin to the defendant JAMES MARCH, a/k/a "Bubbles" at the Slack Bar, Georgia Avenue, N.W., Washington, D.C.

22. In or about March, 1972, the defendants ERNESTINE BARBER, JAMES MARCH a/k/a "Bubbles" and co-conspirator Warren Robinson a/k/a "Alan" met in the vicinity of 1733 Jesup Avenue, Bronx, New York.

23. In or about March, 1972, in New York, New York the defendant WILLIAM TURNER, a/k/a "Dog", received approximately one kilogram of heroin and paid co-conspirator Warren Robinson a/k/a "Alan" approximately $19,000.

24. In or about March, 1972 the defendant ERNESTINE BARBER received a white Corvair from co-conspirator Warren Robinson in New York, New York

25. In or about March, 1972, the defendant HENRY SALLEY and co-conspirator Warren Robinson, a/k/a "Alan," transported approximately one-half of a kilogram of heroin from 1733 Jesup Avenue, Bronx, New York to the vicinity of

Maryland Avenue and 12th Street, N.E., Washington, D.C.

26. In or about April, 1972, the defendant CECIL TATE, a/k/a "Little Pete", and co-conspirator Warren Robinson, a/k/a "Alan," transported a quantity of heroin from 1733 Jesup Avenue, Bronx, New York to Silver Spring, Maryland.

27. In or about April, 1972, the defendant BRYANT FERGUSON transported a quantity of heroin from New York, New York to Washington, D.C.

28. In or about May, 1972 the defendant BASIL HANSEN received approximately one-quarter of a kilogram of heroin in the vicinity of Rosedale Avenue, Bronx, New York.

29. In or about May, 1972, the defendant WALTER JOHN SMITH, a/k/a "Doc," a/k/a "Roger" delivered one case of lactose at 1516 9th Street, N.W., Washington, D.C.

30. In or about May, 1972, the defendant WALTER JOHN SMITH, a/k/a "Doc," a/k/a "Roger," received approximately two ounces of heroin and delivered four cases of lactose at 1516 9th Street, N.W., Washington, D.C.

31. On or about June 30, 1972, the defendant WALTER JOHN SMITH, a/k/a "Doc," a/k/a "Roger" distributed approximately 48.5 grams of cocaine and approximately 61.3 grams of heroin in the vicinity of Georgia Avenue, N.W., Washington, D.C.

32. In or about July, 1972, in the vicinity of 18th Street and Florida Avenue, N.W., Washington, D.C., the

defendant HENRY SALLEY delivered a quantity of heroin to another person and picked up approximately $1,000.

33. In or about July, 1972, the defendant AL TAYLOR received approximately one ounce of heroin from co-conspirator Warren Robinson a/k/a "Alan," in an alley in the vicinity of 12th Street and Maryland Avenue, N.W., Washington, D.C.

34. In or about September, 1972, the defendant AL TAYLOR received approximately one ounce of heroin from co-conspirator Warren Robinson, a/k/a "Alan" in the vicinity of Mt. Pleasant Street and Park Road, N.W., Washington, D.C.

35. In or about October, 1972, the defendant HENRY SALLEY and co-conspirator Warren C. Robinson a/k/a "Alan" traveled from Washington, D.C. to Ridgefield Park, New Jersey.

36. In or about June, 1973, the defendant RONALD SWEENEY a/k/a "Garbage Man" sold approximately one ounce of heroin in an apartment located at 16th and W Streets, N.W., Washington, D. C.

37. On or about October 4, 1973, defendant BASIL HANSEN possessed approximately three-quarters of a kilogram of heroin in Apartment 2-H, 150 West 225th Street, New York, New York.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of May, 1971, and continuously thereafter up to and including December 6, 1973, in the Southern District of New York and elsewhere, WARREN ROBINSON, a/k/a "Alan," the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A) as alleged in Counts Four, six, Nine, Ten, and Eleven of this indictment which are incorporated by reference herein, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with at least five other persons with respect to whom the defendant occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

COUNT THREE

The Grand Jury further charges:

On or about the 13th day of June, 1971 in the Southern District of New York, DORETHEA ANN ELLIS. a/k/a "Dorethea Lane," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance,

to wit, approximately one-quarter kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).).

COUNT FOUR

The Grand Jury further charges:

In or about August, 1971, in the Southern District of New York, WARREN ROBINSON. a/k/a "Alan" and RUFUS WESLEY, a/k/a "Folks," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 1st day of September, 1971 in the Southern District of New York, RUFUS WESLEY. a/k/a "Folks", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about September, 1971 in the Southern District of New York, WARREN ROBINSON, a/k/a "Alan", BRYANT FERGUSON,

and ARHELIA MILLER, a/k/a "Pinky", the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SEVEN

The Grand Jury further charges:

In or about November, 1971 in the Southern District of New York, JOSEPH LA SALATA, a/k/a "Joe Sharp", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of herin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHT

The Grand Jury further charges:

In or about January, 1972 in the Southern District of New York, AL GREEN, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about January, 1972 in the Southern District of New York, WARREN ROBINSON, a/k/a "Alan", and BRYANT FERGUSON, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TEN

The Grand Jury further charges:

In or about March, 1972 in the Southern District of New York, WARREN ROBINSON, a/k/a "Alan", and WILLIAM TURNER, a/k/a "Dog", the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 12, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT ELEVEN

The Grand Jury further charges:

In or about March, 1972 in the Southern District of New York, WARREN ROBINSON, a/k/a "Alan", and HENRY SALLEY, the defendants, unlawfully, intentionally and knowingly did

distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

In or about April, 1972 in the Southern District of New York, BRYANT FERGUSON, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-eighth kilogram of heroin.

(Title 21, United States Code, Sectons 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTEEN

The Grand Jury further charges:

In or about May, 1972 in the Southern District of New York, BASIL HANSEN, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

2:15 P.M.

(In open court; jury present.)

CHARGE OF THE COURT

(Duffy, D.J.)

THE COURT: Ladies and gentlemen, now that the testimony is over and the arguments are over, the time has come for you and for me to do our part in the administration of justice in this case.

Counsel for the Government, counsel for the defendants havebeen seeking over the past few days to guide us in our job in doing justice in this case.

EAch has presented his or her own interpretation of the testimony. Now it is my province to instruct you as to the law, and you must accept my instructions on that.

It is your function to determine the facts, and your decision on the facts is final and conclusive.

In considering the evidence and determining the facts in this case, you must lay aside any question of sympathy. It is your duty as well as mine to administer justice fairly and impartially. In so doing we must be

guided solely by the law and the evidence, and neither you nor I can permit our conclusions to be affected by sympathy or suspicion.

You are to discharge your duty in an attitude of completely fairness and impartiality, and as I emphasized when you were chosen as jurors, without bias or prejudice for or against the Government or the defendants as parties to this controversy.

The case is important to the Government since the enforcement of criminal laws is a matter of prime concern to the community. Equally it is important to each defendant who is charged with a serious crime.

Before I turn to the indictment with which we are concerned here, there are a few general observations that I would like to make. I instructed you at the very start of this case that your important function during the progress of the taking testimony would be to listen carefully to each witness as he testified, to observe him, to watch his demeanor or her demeanor.

It has been evident to me and I think to all counsel that you have followed those instructions. So now you are prepared to undertake your final duty, and in the discharge of that you perform a very high duty of citizenship. You are acting as ministers of justice.

Ladies and gentlemen, you are the sole and exclusive judges of the facts, you pass on the weight of the evidence, you determine the credibility of the witnesses, you resolve such differences as they may be in the testimony and you, members of the jury, draw whatever reasonable inferences that you believe are warranted by the facts as you determine them. It is your recollection of the facts that governs. Should that recollection differ from that of the lawyers or from mine, please disregard anything that we have said as far as the facts are concerned. Don't disregard the arguments, the inferences that the attorneys seek to draw, but if your recollection is different than ours, then your recollection governs.

If you want to have any testimony in the case read back to you, that will be done at your request.

The foreman will receive some notepaper and some pencils and just write me a note. It will be done.

Of course, you will consider only the facts which have been developed at this trial. You are not to be influenced by anything that you have read about criminal cases or that you heard on the radio or TV. It is only what you heard here that counts.

At times during the trial I have been called upon to make rulings on matters of law. I have sustained

objections, I have overruled objections. Please don't concern yourselves with my reasons for doing what I did. They are purely legal matters.

From time to time we have had conferences at the bench either at the request of an attorney or at my request. We have had conferences in the robing room. Those conferences concern purely matters of law or logistics, and they are of no concern to you.

You are not to draw any inference for or against either side because of requests for such conferences.

If during the trial I have indicated in my questions or in my rulings which may lead you to believe that I favor one side or the other, please disregard it. Any questions of mine, any rulings were intended purely for clarification.

YOu have heard the summations of counsel. If you believe that counsel or one party, Mr. Turner, stated something as to which there is no evidence, you may disregard that, that part of what he said.

Statements of counsel, particularly in argument, are not evidence. They are the arguments of advocates, not evidence. Questions are not evidence.

If any answer came from the witness and was

stricken by me, you recall from time to time I told you to take out your little mental eraser and take that out, you are not to consider that as evidence.

The evidence is the answers of the witnesses as you recall them, the testimony that they gave and the exhibits which were received in evidence.

Simillarly, you are to treat the stipulations of the parties to be real evidence, for both sides have agreed to the truth of these facts. Some stipulations, however, were not as to the truth of the facts but rather what a witness would have testified to if he were called.

In this situation it is a question for you, ladies and gentlemen, to decide whether or not the stipulation testimony was truthful, believable, using the same tests and standards y ou are to apply to all other testimony. YOu are to give it the weight which you determine it should have.

During the trial you were permitted to read a transcript of a tape conversation. The transcript before you is not evidence in and of itself. It was intended merely as a transcription of what appeared on the tape recordings which you heard. It certainly was no better than the tapes upon which that transcript is based.

Those transcripts were merely an aid for you. You may certainly hear the tape again if you so desire.

You heard the testimony here. How do you determine what weight to give it? How do you determine whether you are going to believe it or not?

You have heard it said that you should use your plain everyday common sense. That you should do.

You saw the witnesses. How did their testimony impress you? Did they appear to be testifying honestly and frankly?

In evaluating their testimony and their credibility apply your own common sense and experience, just the same way as you would do in determining an important matter in your own lives. In determining whether you have been given a true picture of the situation or not, you may and you should consider the witness' demeanor, his or her lack of candor, his or her ability to express himself, his or her possible bias, his or her strength of recollection and the accuracy of that recollection.

Identification testimony was given. It is an expression of belief or impression by a witness. Its value depends upon the opportunity of the witness to observe the individual at the time in question and then to make a reliable identification later.

Whether a witness had an adequate opportunity to observe an individual will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were the lighting conditions, whether the witness had an occasion to see or to know the person that passed.

In general, a witness bases any identification on his perception through the use of his senses. Usually a witness will identify a person by his sense of sight, but that is not necessarily so, and he may use other senses.

The identification by a witness may have been influenced by circumstances under which a defendant was presented to him for identification. You should scrutinize that identification with care.

You may also consider the length of time that has elapsed between the alleged occurrence of the event and the next opportunity of the witness to see the defendant. It is a factor bearing upon the reliability of the identification.

You may take into account that an identification was made by picking a defendant out of a group of similar individuals and you may consider what kind of weight you wish to give that. You may also consider any occasion where a witness failed to make an identification of a defendant

or that the identification was inconsistent with the one at trial.

If you believe that a witness has been convicted of a crime or done any immoral or discredible act, then you may take that into account in determining the credibility of the witnesses, and you may give it such weight as you determine.

You may also consider whether a witness has a possible interest in the outcome of this case. This does not mean that a witness necessarily will testify falsely because he or she has an interest. It is merely a factor that you ought to consider.

Let me give you an example. The law enforcement agents who testified here might be said to have an interest in the case. It is a case that they investigated and presented. You may consider that and give it whatever weight you believe it should have.

The fact that a witness is an employee of the Government does not mean that you should give it, his testimony, any greater or lesser test than you do for everybody else. That testimony is to be scrutnized by you in the same manner as that of any other witness.

I charge you the Government here is merely one party to this case, and they are to be considered in

no different light than any other party to a lawsuit.

Counsel for the Government is to be considered in no different light than counsel for the defendants or any other litigant. The fact that the Government is a party entitles it to no greater or lesser consideration than accorded to any other party to a lawsuit.

A defendant testified. He also has an interest in this case. That interest is apparent. YOu could consider that interest in determining the weight which you want to give to his testimony.

Certain of the witnesses who testified said in their testimony that they were accomplices to the crime charged against some of the defendants on trial.

I tell you that that testimony is to be weighed with caution and care. An accomplice's testimony implicating a defendant as a perpetrator of a crime is inherently suspect, for such witness may well have an important personal stake in the outcome of the trial. An accomplish so testifying may believe that the defendant's acquittal can vitiate some expected reward that may have been either promised or suggested implicitly, of course, in return for his plea of guilty and his testimony.

In the prosecution of a crime the Government must often use witnesses who are accomplices.

The fact that these witnesses are accomplices is not in and of itself reason to reject their testimony. Weigh their testimony carefully and with caution. Accept or reject that which you feel is believable, that which is unbelievable reject.

There has been testimony before you with respect to the use by narcotics agents of the services of an informant or informer. An informant himself has also testified. Whatever one thinks of informers, the Government uses them in order to get leads about those who are violating the law. Whether one disapproves of this or not is really beside the point providing that such services did not impinge upon the rights of a defendant. Such services by an informant is not forbidden by law, and you are not asked to determine whether or not you agree with the policy which permits the use of such informers.

In weighing a witness' credibility -- credibility is one of those nice lawyer's words -- it means do you believe the witness or not. But in weighing that credibility you should consider whether that particular witness' testimony is supported or whether it is contradicted by other testimony which you believe is true.

If you find that a witness has made a material

misstatement or even lied here or lied at some other proceeding with the intention of misleading you or others, you may disregard that part of the witness' testimony or you may disregar d it all or you may pick and choose and accept that part which yo believe, you find to be reliable, and disregard the rest.

All of these things you must consider in judging the credibility, believability in figuring out where the truth lies.

In considering the evidence it is the quality of the evidence that counts, not the quantity. It is not the number of witnesses, it is not the number of exhibits. It is the quality of the evidence that counts.

We had during summations various references to the witness March, and you saw that prior to his resumed cross-examination I had a hearing which generally would be totally outside your hearing, and your interest whatsoever. I must say that the testimony which was disclosed to me and to you and to the defense counsel was brought to our attention by the Government, but the Government has a duty to do just that.

If it is particularly within the power of either the prosecution or the defense to produce a witness who could give material information, material testimony on

an issue in this case, failure to call that witness may give rise to an inference which would be unfavorable to the party.

However, there is to be no conclusion drawn by you with regard to a witness who is equally available to both the Government and the defendant or where a witness' testimony would be merely cumulative.

You must always bear in mind, and this is so important, that the law does not impose on a defendant in a criminal case the burden or duty of calling any witness or producing any evidence, and that is most important.

During my charge you will hear me refer at times to direct evidence or circumstantial evidence. It may be well for me to start off by explaining what the different is.

Direct evidence is where a witness testifies as to what he saw, what he heard, what he observed, what he knows of his own knowledge, something which comes to him by the virtue c_ his senses directly.

Circumstances evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

Let me state it a little differently. Circumstantial evidence is evidence which tends to prove a

disputed fact by a proof of other facts which have a logical tendency to lead the mind to the conclusion that the disputed fact has been established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of any defendant.

Let me take an example of circumstantial evidence. Let us assume that when you came this morning the sun was shining quite brightly. Let's assume that I had these windows covered with dark drapes and you couldn't see out. Let's assume that somebody walks in here with a soaking wet raincoat and hhortly thereafter somebody else comes in with an umbrella that is dripping wet. Now, under my suggestion you can't see out through those windows and you don't know what is going on outside, but if you were asked whether it was raining after seeing the sopping wet raincoat and the dripping umbrella, it would be reasonable and logical for you to conclude that it is now raining, and that is all there is to circumstantial evidence. You infer on the basis of reason and experience from established fact to some other fact.

Before we consider the precise charges against each defendant, let me take care of some other preliminary matters.

1A

The indictment returned by the grand jury contains two separate types of counts or charges.

The first count, the conspiracy count, charges that all the defendants, along with certain others, conspired to violate the federal narcotics laws which prohibit the unlawful importation of heroin and cocaine, and which prohibit the distribution of heroin or cocaine or their possession with intent to distribute.

The other counts, which I will hereafter refer to as the substantive counts, charge particular defendants with actual violations of those laws.

Certain counts of the indictment have been severed. Certain defendants named in the indictment have also been severed and they are not being tried before you. You are not to concern yourselves with the reasons for such severance. The reasons are many and varied. Don't try and speculate on that. You have enough to do without speculation on a thing like that.

Certain persons who the Government alleges were also engaged in criminal activity with the defendants were not accused in this case as defendants, but were named as co-conspirators. That is not to be considered by you in your deliberations except insofar as you may consider that on the question of credibility, if they appeared as a

witness. If they are co-conspirators, then you may consider that on the question as to whether you believe them or not.

No inference should be drawn by you because persons are included or omitted from an indictment.

I have from time to time during this trial suggested to you that guilt is personal. The guilt or innocence of each defendant here on trial must be determined with respect to him or her solely on the evidence against him or her or the lack of evidence.

The charges against him or her stand or fall on the proof or lack of proof against him or her, and not on the proof against any other defendant or co-conspirator.

There are certain principles of law which apply to every criminal case and to which I made reference at the beginning of this case and emphasized at the time of your selection as jurors. I will repeat some of them now.

The indictment is merely an accusation. It is a charge. It is not evidence or proof of a defendant's guilt. No weight whatsoever is to be given by you to the fact that an indictment was returned against a defendant.

It may have appeared that certain defendants may have been in custody while others were free to come and go as they chose. The reason for this is that some

defendants were able to afford bail and others were not. You are to draw absolutely no inference as to whether a defendant is able to afford bail or whether he was not.

Each defendant has pleaded not guilty. The Government has the burden of proof, proof beyond a reasonable doubt, of each of the charges alleged in the indictment. A defendant does not have to prove his innocence. On the contrary, he is presumed, he or she is presumed to be innocent of the accusations contained in the indictment.

The presumption of innocence was in his favor throughout this entire trial, it is in his or her favor even now as I instruct you, and remains during the course of your deliberations in the jury room.

The law presumes that a defendant who has pleaded not guilty is innocent of the crime with which he or she is charged.

Thus, the defendant, although accused, begins the trial with a clean slate, no evidence against him. The Government, having made the charge, must prove it beyond a reasonable doubt. The burden of proof never shifts. It remains with the Government throughout the trial.

A defendant in criminal cases is not called upon to prove his innocence. Since the burden is on the Government to prove the accused guilty beyond a reasonable

[4145]

doubt of every essential element of the crime charged, the defendant has a right to rely upon the failure of the prosecution to establish that proof. The defendant may also rely upon evidence brought out on cross-examination of Government witnesses.

The law does not impose upon the defendant the duty of producing any witness. Some defendants produced witnesses. One took the stand. Other defendants have done neither.

There are many reasons why a defendant may decide not to testify. He or she may feel that because of the strain and tension he would not be a calm witness. He might be embarrassed by his lack of education, by his inability to speak well in front of a group of people.

Please, I tell you, do not speculate as to why a defendant either chose to testify or not. You are to draw no inference whatsoever from anyone either becoming a witness or not.

I remind you once more that a defendant may rely upon the presumption of innocence and need do nothing more. The presumption of innocence to which I have referred is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

I have used the term a number of times. What is a reasonable doubt?

The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in this case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence.

A reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense, your experience. It is not caprice; it is not whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy.

If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction which amounts to a moral certainty, if you have such a doubt as would cause you, as a prudent person, to hesitate before acting in matters of importance, then you have a reasonable doubt, and in that circumstance it is your duty to acquit.

On the other hand, after such an impartial and fair consideration of all the evidence, if you can candidly and honestly say that you do have an abiding conviction of the defendant's guilt, such conviction as you would be

willing to act on in the most important matter in your life, then you have no reasonable doubt, and under such circumstance it is your duty to convict.

One final word. Proof beyond a reasonable doubt is not proof to a positive certainty or beyond all possible doubt. If that were the rule, it would be practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by nature, is not susceptible to a mathematical conclusion.

As a consequence, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

You may consider some of the evidence which has been introduced as tending to prove an alibi. That means that the defendant was not present at the time and place alleged and, therefore, could not have committed the offense. If, after consideration of all of the evidence in the case, you have a reasonable doubt as to whether that person, the defendant, was present at the time and place the alleged offense was committed, you must acquit him.

Now, in our federal system there are no crimes except those that are defined or created by the statute or

[4148]

laws written by Congress. In this case and in all others, the charges, the accusations made against these defendants are made under certain federal laws passed by Congress. I don't believe it is necessary for you to know the exact words of any of these laws. Nevertheless, I think it would be a help, as a background for your later understanding, to give you a basic description of the laws that are involved in this case and as a small accommodation as to time because of the change of law, which I will tell you about.

The period charged in the indictment runs from 1969 to 1973. Basically, there were two separate federal laws, one that was in force for some years ending on May 1, 1971, and another which replaced it and became effective on May 1, 1971.

In the end this will be less complicated to you than it might start out sounding.

Nevertheless, I give you this background so that some of the things I say later, and some of the things I will read from the indictment will perhaps make more sense to you.

The relevant federal narcotic law in effect in 1969, 1970 and up to May 1, 1971 is Section 173 and Section 174 of Title 21, United States Code.

[4149]

It provided in part, "Whoever unlawfully and knowingly imports or brings any narcotic drug into the United States contrary to law, or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States," and then it goes on as to punishment.

Section 173 provided that it was unlawful to import or bring in any narcotic drug into the United States, except such amounts as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate use.

Needless to say, I did not read the entire statute.

As you will see soon, part of the conspiracy charge in this case relates to alleged violations of those statutes.

Effective May 1, 1971, these provisions were replaced by another statute now contained in Title 21 of the Code. As I read the indictment to you, you will hear me refer to Sections 812, 841, and so on. These provisions,

effective May 1, 1971, forbid the distribution or the possession of, with the intent to dis ribute, certain kinds of narcotic drugs in schedules of so-called controlled substances. Heroin is among these. It is on Schedule 1. Cocaine is among these. It is on Schedule 2.

Very simply described, these provisions make it unlawful for any person, knowingly or intentionally, to distribute or possess with intent to distribute any controlled substance, such as heroin or cocaine.

Under the law, both before May 1, 1971 and after that date, it has been a crime to conspire to violate any of these sections.

With that statutory framework in mind, let me again outline and then go specifically to the charges in the indictment.

Count 1, as I said, charges a conspiracy during 1969 through 1973. It charges that the conspiracy had as its objective violations of both the old statute prior to May 1, 1971 and the new statute following May 1, 1971.

The substantive counts, Counts 4 through 6 and 8 through 14, charge violations after May 1, 1971, and these substantive charges are under the new provisions that I have mentioned to you.

With respect to Count 1, the conspiracy count,

an object of the alleged conspiracy was a violation of the statute in effect until May 1, 1971, that is, an object of violating the law prohibiting anyone from receiving, concealing, selling or in any way facilitating the transportation, concealment or sale of narcotics, knowing that the narcotic had been illegally imported into the United States.

Then the indictment charges that a second object of the conspiracy, and this would relate to the period after May 1st, was to violate the present statute, the one that forbids the distribution or possession with intent to distribute Schedule 1 or Schedule 2 narcotic drug controlled substances, and, of course, that includes heroin and cocaine.

I have told you that in your system violations of the criminal law must be put in terms of a duly enacted statute, and so I have addressed your attention to the statutes which underlie the time periods of the conspiracy charged in the indictment.

At the same time, I think it is fair to say that both before and after May 1, 1971 the basic wrong alleged was the unauthorized sale or transfer of dangerous drugs, and the basic nature you must find of the conspiracy alleged in this case was a conspiracy to engage in the

sale and distribution of such narcotic drugs.

I have mentioned to you already there is a difference between Count 1, which is the conspiracy count, and the substantive counts.

A conspiracy to commit a crime is an entirely separate and different crime from the substantive crime which may be the object of the conspiracy. The essence of the crime of conspiracy is an agreement or understanding to violate the law. Thus, if a conspiracy exists, even if it should fail in its purpose, it is still punishable as a crime.

Congress has made a conspiracy or concerted action to violate a federal law a crime entirely separate, distinct, and different from a violation of the law or the laws which may be the object of the conspiracy.

Against this background, we turn now to a consideration of the specific counts of the indictment.

Since the essential elements which the Government must prove in order to sustain the respective charges in the conspiracy count are different from those required for each substantive count, let me consider first the elements required to prove Count 1, the conspiracy count alleged in the indictment.

Count 1 reads:

"The Grand Jury charges:

"1. From on or about the 1st day of January, 1969 and continuously thereafter up to and including December 6, 1973, in the Southern District of New York and elsewhere, Al Taylor, William Turner, a/k/a 'Dog,' Bryant Ferguson, James March, a/k/a 'Bubbles,' Charles Ramsey, Rufus Wesley, a/k/a 'Folks,' Dorethea Ann Ellis, a/k/a ' Dorethea Lane,' Walter John Smigh, a/k/a 'Doc,' a/k/a 'Roger,' Cecil Tate, a/k/a 'Little Pete,' Henry Salley, Joseph La Salata, a/k/a 'Joe Sharp,' Ernestine Barber, Basil Hansen, Al Green, Arhelia Miller, a/k/a 'Pinky,' and Ronald Sweeney, a/k/a 'Garbage man,' the defendants, and Warren Robinson, Frank Pugliese, a/k/a 'Georgie,' a/k/a 'Butch,' named in Count 1 as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173, 174, 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"2. It was a part of said conspiracy that, prior to May 1, 1971, the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs,

the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

"3. It was further a part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedules I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code."

In order to convict a defendant on trial, the Government must prove beyond a reasonable doubt the following essential elements:

1. The existence of the conspiracy charged in the indictment;

2. That the defendant knowingly and wilfully joined himself with the conspiracy with the intent to further its purpose;

3. That one of the conspirators knowingly committed at least one of the overt acts set forth in the

indictment at or about the time alleged in the Southern District of New York.

I have told you already the Southern District of New York is that part of New York State which runs from Governors Island to Albany County, and nothing more. It certainly does not include New Jersey, Maryland or the District of Columbia.

If the Government fails to establish each and every essential element beyond a reasonable doubt, then you must acquit a defendant on this count.

If the Government succeeds, your duty is to convict on this count.

(Continued on next page)

Let us consider what is a conspiracy.

The idea of a conspiracy is simple. A conspiracy is a combination, agreement or understanding of two or more persons by concerted action to accomplish a criminal or unlawful purpose; in this instance, to import into the United States or to distribute or to possess with intent to distribute narcotic drugs.

The gist of the crime is unlawful combination or agreement to violate the law. The success or failure of the conspiracy is immaterial on this question.

However, in this case, the Government contends that at least in part the conspiracy succeeded. However, as I said, the success of failure of the conspiracy is immaterial on the question of guilt or innocence.

To establish the conspiracy, the Government is not required to show that two or more persons sat down around a table and entered into some kind of a solemn pact, orally or in writing, stating that they were going to form a conspiracy to violate the law, or the details or the means by which the objective was to be achieved. Common sense will tell you, when persons in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding.

But the evidence must show in order to establish

that a conspiracy existed that its members in some way or manner, through any contrivance, impliedly or tacitly, came to a common understanding to violate the law and accomplish an unlawful plan.

In determining whether there has been such an unlawful agreement, you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. The adage, "Actions speak louder than words," is applicable here.

Usually the only evidence available is that of disconnected acts, conduct on the part of the alleged individual conspirators, which acts and conduct, however, when taken together in connection with each other and considered as a whole, permit an inference that a conspiracy existed as conclusively as direct proof, but the acts of the alleged conspirators must show their fundamental agreement to violate the law.

Items of evidence are not to be viewed in isolation but in conjunction with one another, and upon the totality of all the evidence.

Conspiracy has sometimes been called a partnership in criminal purposes, and as to the partnership each member becomes an agent of the others.

To become a member of the conspiracy, a

defendant need not know each and every other member, nor of the participation of the other members, nor of the details of the conspiracy. For example, there is no proof that certain defendants knew or even met other defendants, or alleged co-conspirators. Each member of the conspiracy may perform separate and distinct acts at different times and at different places.

Some co-conspirators may play major roles and others minor roles. The guilt of a conspirator is not governed by the extent, duration, whether he played a greater or lesser role in the conspiracy.

Even if one joined a conspiracy after it was formed and engaged in it to a degree more limited than that of most other conspirators, he is equally culpable as long as he was a co-conspirator.

In other words, it is not required that a person be a member of a conspiracy from the start. He may join it at any point during its progress and be held responsible for all that has been done before he joined and all that may be done thereafter during its existence and while he remains a member.

A conspiracy, once formed, is presumed to continue until its objectives are accomplished or there is an affirmative act of termination by its members, or it

is otherwise terminated.

So, too, a person found to be a member of the conspiracy is presumed to continue in its membership until its termination, or unless there is proof of his withdrawal or disassociation.

You must first determine whether the proof established the existence of the conspiracy, as charged in the indictment. In deciding this first element, you must consider the evidence which has been admitted with respect to the conduct, acts and declarations of each alleged co-conspirator and such inferences as may be reasonably drawn therefrom.

It is sufficient to establish the existence of a conspiracy if, from the proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that the minds of at least two alleged co-conspirators met in an understanding way to accomplish by the means alleged one or more of the objectives of the conspiracy as charged in the indictment.

If you conclude that the conspiracy did exist, then the next thing you have to do is determine whether each defendant was a member. Guilt, as I said, is personal, and you must consider each defendant individually. His participation in the conspiracy, if you find one did exist,

must be established by the independent evidence of each defendant's own acts, statements, conduct, and the reasonable inferences to be drawn therefrom.

Even if you find beyond a reasonable doubt that a particular defendant made a delivery of drugs or made an actual sale or purchase, but did not share a common purpose or plan, or act in furtherance of the alleged conspiracy charged in Count 1, then you must find that defendant not guilty with respect to the conspiracy count.

If you find that a particular defendant was a member of the conspiracy, you must be satisfied beyond a reasonable doubt that, aware of its purpose, the particular defendant was a willing participant with the intent to advance the purpose of the conspiracy.

If you find that, then no matter how limited the participation may be, he is responsible for everything that took place in the conspiracy.

Once you are are satisfied beyond a reasonable doubt that a conspiracy existed and that a particular defendant is a member, then the acts and declarations of other persons, if you also find he is a member of the conspiracy, made during its existence in furtherance of its objects, are considered the acts and declarations of all

members of the conspiracy even though they were not present.

I told you about taking evidence subject to connection. I told you I was going to explain it to you. I will say it again.

Once you are satisfied beyond a reasonable doubt that a conspiracy existed and that a particular defendant was a member, then the acts and declarations of any other person whom you also find was a member of the conspiracy, made by such co-conspirator during the existence of the conspiracy and in furtherance of its object, are considered the acts and declarations of all of the members of the conspiracy, even though they were not present.

Summing it up in a simple way, if there was in fact a partnership, each partner acts and speaks for the other in furtherance of the partnership business, even though the other partners are not present.

It is most important that you recognize -- and the charge here is that the conspiracy existed for a particular length of time, so it is even more important than usual -- it only applies, this principle we are talking about only applies to the acts and declarations done or made during the continuance of the conspiracy charged and in furtherance thereof.

"In furtherance thereof" means to carry out the objects of the conspiracy. It does not apply to anything else which does not have those characteristics.

Madam Clerk, swear in the marshal.

Look, I have to tell you something, folks. I am not finished telling you about the law, but I recognize that there comes a time when we have to get up and walk around and stop listening to the charge. We are going to take a break.

Please, up to this point I hope you have not made up your mind, that you have kept an open mind. Please keep an open mind until I am finished.

Madam Clerk, swear in the marshal -- at this point I am putting you in the custody of the marshal.

(Marshal sworn)

(The jury leaves the courtroom.)

(Recess)

(In open court; jury present)

THE COURT: We were talking about the law of conspiracy.

The existence of a conspiracy, indeed the membership therein, may be established either by direct or circumstantial evidence. Either direct or circumstantial evidence will suffice if you are convinced by that evidence

beyond a reasonable doubt of the guilt of the particular defendant you are concerned with at the time.

In this case the Government relies on both direct and circumstantial evidence. It contends that, through the testimony of the accomplices or co-conspirators, it has, in addition to the circumstantial evidence, offered direct proof of the conspiracy.

If the reasonable inferences to be drawn from all the evidence lead you to two conclusions, one favoring guilt and one favoring innocence, it is your duty to favor and to accept that one which favors innocence. The reason for this is that if such an inference is reasonable there would be a reasonable doubt with respect to that.

Needless to say, whether a defendant knowingly and intentionally participated in a claimed conspiracy is a question of fact. Clearly, this concerns what is going on in a person's mind. Science has yet to invent a device whereby we can go back in time to the occurrence of some event and determine what a person's intent or knowledge was at that time. You must determine that from that person's act, conduct and the surrounding circumstances, and such inferences as you may draw from that.

Knowledge may be inferred from circumstances

that would convince a man of ordinary intelligence that this is the fact.

If you find that a defendant acted with intentional disregard and that narcotics were present or being handled or being processed, with a conscious purpose to avoid learning the truth, unless he actually believed the narcotics had not been present, the requirement of knowledge is met.

If you find circumstances of secrecy or intrigue, the use of fictitious names, in attempts to conceal the true nature of a transaction, you may, but need not, consider that as circumstantial evidence of criminal intent.

The evidence, however, to be offered and considered by you on a question of knowledge should not, in and of itself, serve as a substitute for other proof. It is to be considered by you with the other evidence in the case in reaching your judgment.

Let me give you one word of caution. Mere association with an alleged conspirator or conspirators does not establish the participation of anyone in the conspiracy if you find one to exist, nor does association, even coupled with knowledge, make that conclusion for you. Mere presence during a conspiratorial act, coupled with

knowledge, but without participation, is not enough. A conspirator must knowingly and intentionally join the conspiracy, and when I say "join the conspiracy," I don't mean that a person has to file an application, but he must knowingly join the venture. He must promote it. He has to have a stake in the outcome.

In the vernacular, he has to be in on the scheme.

Thus, even if you find that a particular defendant associated with other defendants, and you further find that the latter were participants in a conspiracy to violate the narcotics laws, that this particular accused knew the others were engaged in such activities, this by itself would not be sufficient to find a particular defendant guilty on the conspiracy charge.

Let me give you an example.

Certain photographs were introduced into evidence by the Government which purportedly showed certain defendants in the company of other defendants and alleged co-conspirators. These photographs, standing alone, do not prove a conspiracy, and certainly do not prove that the people in them were conspirators.

In this case the Government has sought to prove certain acts by certain events which may have occurred

after the termination date of the conspiracy as alleged in the indictment. For example, you will recall the witness Ellis testified to a transaction which she said occurred in late 1974. Also a statement, Government's Exhibit 84, which was made in 1975.

These items you may consider to the extent you credit the proof as evidence of guilty knowledge and intent as to the persons against whom it was offered.

In deciding what weight, if any, to give the evidence, you may consider the fact that the Ellis testimony and the statement which is Government's Exhibit 84 concerned events which allegedly occurred ten to fourteen months after the conclusion of the alleged conspiracy charged in the indictment. If you believe that the evidence is too remote in time, you may disregard it. If you deem it to have probative value, then you may consider it, in connection with all of the other evidence, in deciding the guilt or innocence of the two defendants against whom it was offered as to the charges in this indictment.

You should apply these instructions to any other acts which you find will prove to have occurred after the termination date of the conspiracy.

As I explained, statements and acts of a conspirator may be considered to be statements and acts of a proven co-conspirator only if they are made or done in furtherance of and during the existence of the conspiracy.

Proof of a subsequent act or subsequent statement is not and cannot be a substitute for proof of the crime charged in the indictment.

What I have said, if you find a defendant guilty, you must find that the defendant participated in a conspiracy, this conspiracy, with knowledge of at least some of the purposes and with the intent to aid the accomplishment of its unlawful ends.

If you find that the Government has sustained its burden of proof, we reach the next element.

I have already mentioned that the third essential element of the conspiracy is that an overt act intended to effect the object of the conspiracy must be committed by at least one of the co-conspirators after the unlawful agreement was made.

An overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of the conspiracy.

The purpose of requiring proof of an overt act

is that while parties may conspire and agree to violate the law, yet they can change their minds and do nothing to carry the agreement into effect. In that event, the agreement does not constitute an offense.

The overt act need not be a criminal act, nor the very crime which is the object of the conspiracy.

In this particular indictment, a number of overt acts have been alleged. You will receive a copy of the indictment and you can refer to it.

For legal reasons solely, I have cut out of this indictment certain overt acts.

You may refer to them. I will not sit here and read them all to you.

You will see that a particular overt act may, by itself, charge innocent conduct, but if it was for the purpose of furthering the conspiracy, in that event it sheds its innocent appearance. It is an overt act by the alleged co-conspirator in furtherance of the objective of the conspiracy.

It is not necessary for the Government to prove that each member of the conspiracy participated in or committed each and every overt act since the act of anyone in furtherance of the conspiracy becomes the act of all other members.

The Government is also not required to prove that each of the overt acts as alleged in the indictment actually occurred. It is sufficient if it proves the commission of at least one of the acts in the Southern District of New York, and I explained to you before what the Southern District of New York is and, as you can guess, it includes Manhattan and the Bronx, at or about the time alleged, although in this case the Government claims that it proved many more than the one overt act required.

This overt act, by the way, does not necessarily have to occur at the precise time or place as alleged. So, too, the indictment charges that the conspiracy began on or about January 1, 1969 and continued thereafter until December 6, 1973. It is not required that the Government prove that the conspiracy started on that specific date or ended on that specific date. But I tell you, anything that occurred after that specific date is to be considered by you only as to the defendant against whom it was offered.

It is sufficient if you find in fact that a conspiracy was formed and existed for some substantial period of time within the period set forth in the indictment, and that at least one of the overt acts was committed in furtherance of the objectives of the conspiracy during

that period.

With these principles as a guide, you will consider as to whether the Government has, by the required degree of proof, established the essential elements as to each defendant.

There is one more thing I must say before we leave the law of conspiracy.

Some of the defendants have inferentially and expressly contended that the Government's proof fails to show the existence of the one overall conspiracy which the indictment charges. They argue that no conspiracy existed or if, in fact, one did exist, then at best the evidence shows several separate and independent conspiracies involving various groups.

Proof of several separate conspiracies is not proof of the single overall conspiracy charged in the indictment unless one of the several conspiracies which is proved is the single conspiracy which the indictment charges.

Let me repeat that.

Proof of several separate conspiracies is not proof of the single overall conspiracy charged in the indictment unless one of the several conspiracies which is proved is the single conspiracy which the indictment

charges.

What you must do is determine whether the conspiracy charged existed between two or more conspirators. If you find that no such conspiracy existed, you must acquit. However, if you are satisfied that such a conspiracy existed, then you must determine who were members of that conspiracy.

If you find that a particular defendant was a member of another conspiracy, not the one charged in this indictment, then you must acquit that defendant.

In other words, to find a defendant guilty, you must find that he was a member of the conspiracy charged in the indictment, not of something else.

In determining whether a given conspiracy exists, you may consider what the evidence shows as to the changes of personnel in activity. You may find a single conspiracy even though there were changes in the personnel and activities, provided you find that some of the conspirators continued through the life of the conspiracy and that the purposes of the conspiracy continued to be those charged in the indictment.

The fact that the parties were not always identifical does not mean that there were separate conspiracies. In other words, if at all times the alleged

conspiracy had the same overall primary purpose and the same nucleus of participants, the conspiracy would be the same even though, in the course of its operation, additional conspirators joined in and performed additional functions to carry out the scheme, while others were not active or terminated their relationship.

On the other hand, if you find that one overall conspiracy terminated and another one was formed, you can't find a single conspiracy, even though the purpose of both conspiracies were the same and that some defendants were members of both.

I said before to you there is a presumption that a conspiracy continues until its objectives are accomplished or it is otherwise terminated.

Let me impress upon you once more: If you decide that the conspiracy charged in the indictment existed between any of the defendants, then you must decide as to each defendant individually whether he or she joined the conspiracy with knowledge of its purpose.

In determining whether any defendant was a party, each is entitled to individual consideration of the proof respecting him or her, including any evidence, knowledge, lack of knowledge, status, participation, and so on.

In order to find any of the defendants guilty of the crime of conspiracy involving a violation of the law in effect prior to May 1, 1971, you must be convinced of, in addition to the elements of the conspiracy as I have charged, the following elements also:

First, that on or about the dates set forth, the defendants conspired to either receive or sell or in any manner facilitate the transportation or concealment or sale of the narcotic drugs;

Second, that the narcotic drug which was the object of the alleged conspiracy had been imported unlawfully into the United States;

Third, that the defendants knew it had been illegally imported into the United States.

Under this law, it is not only the receipt of the illegally imported narcotics that is prohibited. The law condemns other distinct and separate activities, and the conspiracy to commit any one of them constitutes a violation, whether it is to receive, conceal, or facilitate the transportation or concealment of the narcotics.

"Received" is used in its very ordinary sense. As to "conceal," "conceal" means to hide out of sight or to prevent disclosure. "Facilitate" means to

make something easy or less difficult, to aid or assist in furthering or advancing in a meaningful way one or more of the acts prohibited under the law.

It is sufficient if the Government proves that the defendants conspired to commit any one of the prohibited acts.

It will doubtless occur to you that no direct evidence has been offered through the Government to establish the illegal importation of narcotics and the defendants' knowledge of such illegal importation. The reason for this is that the Government may rely upon an inference. Well, the burden remains on the Government to persuade you beyond a reasonable doubt that each of the elements necessary to establish a violation of the statute is present, and you are entitled with respect to the old law in Count 1 of the indictment to infer from the fact of possession of narcotic drugs that the drugs were illegally imported and that the defendants knew them to have been illegally imported.

(Continued on next page)

You may draw this inference because of the law. A word as to the basis on which we have authorized juries to draw such inferences: Official investigation, Congressional findings indicate that all heroin found in these United States has been illegally imported into this country. Heroin is not produced here domestically, and it is illegal to import heroin,

With these facts, it is reasonable to infer that any heroin found here has been illegally imported.

It is also reasonable and rational to infer that anyone who has unexplained possession of it or who deals in any quantity of heroin would undoubtedly know of its source or at least he would know that it had been brought here from somewhere outside the country. This inference, however, is not binding upon you. You must rely upon your own knowledge, common sense and worldly experience.

The new law, the law after May 1, 1971, makes it unlawful for any person to knowingly or intentionally distribute or have possession with intent to district a control substance. I will tell you about this in a little greater length in just a few minutes.

I again remind you that you need not find an actual violation of the law in order to find a conspiracy to violate the law as I have charged it to you.

Should you find beyond a reasonable doubt that the conspiracy charged did exist and that any given defendant was a member of that conspiracy and that an overt act was performed, then you must decide when it was that that defendant entered the alleged conspiracy.

In order to assist you, I have prepared a special verdict sheet which will be going with you into the jury room.

Turning to the substantive counts. All of these counts are alleged to have occurred after May 1, 1971. Let me read you the new law after May 1, 1971.

"It shall be unlawful for any person knowingly or intentionally to distribute or possess with intent to distribute a controlled substance."

Now, there are certain counts in the indictment other than the conspiracy count which is Count 1, which are substantive counts. As to each of these, you will consider them separately from the conspiracy count.

Before you can find a named defendant guilty of a crime charged in these counts, you must be convinced beyond a reasonable doubt that the Government has proved the following elements.

First, that on or about the date set forth in each count, the defendant or defendants named in that count

distributed or possessed with intent to distribute a narcotic drug controlled substance.

Second, that they did it unlawfully, wilfully and knowingly.

Third, the substance which the defendant named in a count possessed was in fact a narcotic drug controlled substance.

Let me say a few more words on those elements:

The first element is distribution or possession with intent to distribute the drug. What does that mean? Well, "distribute" means the actual constructive or attempted transfer of the drug. The word "possess" has its everyday common meaning. To have something within your control. And have something within your control does not necessarily mean that you have it in your hand or your pocket. Control may be demonstrated by the existence of a working relationship between the person having such control and a person having physical custody.

The word "intent" refers to a person's state of mind. The term "possess with intent to distribute" can be fairly stated to mean, to control an item with the state of mind or purpose to transfer the item.

On this element, the Government contends it has proved beyond a reasonable doubt that defendants

charged in these counts either knowingly transferred and possessed the drug or simply possessed the drug and that at the time they possessed it, it was their mental state that they intended to transfer it to somebody else.

Secondly, the terms "unlawfully, wilfully and knowingly," means that you must be satisfied beyond a reasonable doubt that the named defendants knew what they were doing, that they did it deliberately and voluntarily as opposed to mistakenly or accidentally or as the result of coercion.

It is not necessary for the Government to show that the defendants knew they were violating some particular law on the books. It is sufficient if you are convinced beyond a reasonable doubt that there be a showing that they were aware of the general unlawful nature of their act.

I said before and I will repeat it. Knowledge and intent exist in the mind. It is for you to arrive at a decision as to what a person's knowledge and intent were by considering all of the facts, the circumstances shown by the evidence, including the exhibits and to determine from all these facts and circumstances whether there was knowledge and intent.

The thir d element, is that the indictment

[4179]

charges in each substantive act that a narcotic drug controlled substance is heroin. I will tell you right now, heroin and cocaine are both narcotic drug controlled substances.

I told you before and I will repeat it. There is a difference. Conspiracy does not require the proof of a crime other than that conspiracy or that the objective, which I guess is a better word, that the objective, criminal objective of the conspiracy accually go through.

A substantive crime, the Government must prove all of the elements of that crime.

You have heard testimony about a number of narcotics transactions. Not all of them are charged in the indictment. You are not to speculate why some alleged transfers of narcotics are charged in substantive counts and others are not. That is not relevant to your deliberations.

Needless to say, when you are dealing with the substantive counts, you must be convinced beyond a reasonable doubt that the substance reported sold, concealed or transferred was in fact a narcotic drug. It is not necessary that the Government prove it by direct evidence. Just as with any other element, the existence in dealing with narcotics may be proved by circumstantial evidence.

There is no need to place a sample before you, nor is there need to have a chemist come in as long as the evidence furnishes ground for inferring that the material in question is narcotics.

In considering the circumstantial evidence as to whether a particular substance was narcotics, you may consider the testimony that someone had tested samples of the powder. You may consider the secrecy and deviousness with which the transactions were handled. You may consider the look of the substance. You may consider a high price being paid for the substance. You may consider descriptive language in the transactions. You may consider each of these things, or you may decide not to consider any of them.

You will recall toward the end of the Government's case there was some testimony of a seizure of alleged narcotics on West 225th Street. I instructed you at that time, and I do so again, that evidence is only to be considered on the substantive count involving the one defendant whom the Government claims was involved. It has nothing whatsoever to do with the conspiracy count of this indictment. The weight which you choose to give that evidence, again, is solely up to you.

There is one other statute which I must comment on which the Government relies on. It is the aiding and abetting statute.

That provides in pertinent part that a person who commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal. Of course, you will understand no defendant can be found guilty unless he did the prohibited acts or aided or abetted those acts unlawfully and knowingly.

In order to find that a defendant aided and abetted another person in distributing or possessing a narcotic drug controlled substance with intent to distribute it, you must be satisfied that the particular defendant in some way knowingly associated himself with the criminal venture and knowingly participated in it as something he wished to bring about and by some action of his tried to make it succeed, that he had a stake in the venture.

In other words, if one fully aware of what he is doing plays a significant role in furthering a transaction by law, he is an aider and abettor, and as such is equally guilty with the person who directly performed the illegal act.

The mere presence, however, at the scene of

[4182]

a crime and knowledge that a crime is being committed is not sufficient to establish that a defendant aided and abetted a crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

There are a few general matters which I want to take up with you before you begin your deliberations.

You may have heard comments as to possible sentences. Let me tell you right now. YOu are the sole judges of the facts. Sentences are none of your business. It is a heavy duty which weighs on me. Don't burden yourselves with being more than a judge of the facts. Matters of law are things which I am requir ed to handle. The law which you need to know I have been trying to give you in this charge.

All of the evidence both direct examination and cross-examination and the exhibits should be considered by you. Also, it is your recollection and yours alone that governs and you must unhesitatingly reject any statement of fact which I made or which anybody else made that does not accord with your recollection.

Let me remind you again, the Government to prevail must prove with respect to each count the essential elements beyond a reasonable doubt. I have already

[4183]

explained to you before in these instructions if it succeeds, your verdict should be guilty. If it fails, your verdict must be not guilty.

You must consider each count separately and render a separate verdict as to each count. You must consider each defendant separately and render a separate verdict to each defendant.

You may render a verdict of guilty on each coun tor a verdict of not guilty on each count or guilty on one and not guilty on ot hers, sc on and so forth. It is entirely within your province.

Since, however, there are a fair number of separate counts before you, I have attempted to devise two items which I hope will assist you in your deliberation.

First, as I told you, I have taken a copy of the indictment and cut out the little parts that are of no bother to you, and you may have that indictment with you in your deliberation.

Second, I have prepared a number of sheets on which I have listed the various counts and the defendants named in each count. Alongside each defendant there is a box for not guilty or guilty. You may mark up these sheets. In rendering your verdict you may refer to them.

On the conspiracy count, I also want you to

indicate if you find a particular defendant guilty, whether he joined before or after May 1, 1971.

There will be 12 of you on the jury who will deliberate. If you are going to find a defendant guilty, your verdict must be unanimous.

No one should enter upon deliberations in a jury room with such pride that you would refuse to change your opinion if you were convinced by the intelligent argument on the part of another juror or jurors. However, don't change your opinion by doing violence to that opinion. You are entitled to that opinion. Each one of you must decide this case for himself or herself after thoroughly viewing the evidence and exchanging views with your fellow jurors.

If you wish any part of the exhibits, they will be sent in to you. If you wish any of the testimony be read back to you, The transcript of the testimony will not be sen tback to you, but if you wish anything read, I will have it read to you.

This is an important case. Every criminal case is an important case. It is important to the Government and you can see and you know how important it is to the defendants. Please, handle it as an important matter. Decide the case solely on the evidence and the law as

I have charged it to you.

All right, Marshal, you may open the door.

Folks, stay exactly as you are.

I will see all counsel inside.

(In the robing room.)

THE COURT: We are all in here now. Does anybody have an exception?

MR. GOLDBERCER: I do, Judge. First of all, I may have a misunderstanding. Is the verdict sheet going to contain who it is is alleged to be a part of the conspiracy pre-May 1971?

THE COURT: No way.

MR. GOLDBERGER: I don't really think --

THE COURT: Just boxes.

MR. GOLDBERGER: Except even under the Government's theory my client doesn't enter the conspiracy until May 1, 1971, which would be the new law. I am not sure in regard to that -- let me express it this way. It should be clear on the verdict sheet which defendants are to be possibly considered as pre-May 1971 and which of those are not to be considered.

MR. SCHMUKLER: The Government contended there were six defendants.

THE COURT: Give me the sheet.

MR. GOLDBERGER: Secondly, I have had this objection before and I once again object to the term "innocence" being used by the Court other than the artful term, presumption of innocence.

The third exception, your Honor, is in regard to your Honor talking about the question of the incarcerated defendants and I know your Honor was being extremely fair to those people that are incracerated but what your Honor said was, you said what it implied is that some people can afford bail and others couldn't afford bail which leads to the clear implication that my client is some sort of a money person that can afford bail, when in truth and reality, she was released on her own recognizance by you and didn't have to put up a dollar for bail.

I am not sure what I am asking. I am going to ask the Court in regard to my client to indicate to the jury that no bail was required of her appearance in court at any time, that she has been released on her own recognizance.

THE COURT: I will not do it for your client alone.

MR. SIEGAL: No exceptions, no requests, your Honor.

MR. POLLAK: No exceptions, no requests.

MR. COHEN: Your Honor, I would respectfully object to Mr. Goldberger's request that the boxes of the various defendants be indicated as to who joined before or after. I know that Mr. Engel did not in his summation indicate that my client participated allegedly prior to May of 1971. I think you inadvertently omitted his name. Your intention, perhaps, was to indicate him but you omitted it inadvertently.

I think your Honor, that would be prejudicial to include that type of appellation or designation to defendants. I think it definitely would be a stimulative of a judgment which should not be made by a jury, a pre-conceived situation, so I would respectfully object.

I have one further comment, if I may.

THE COURT: Sure.

MR. COHEN: Your Honor, I don't know the way to frame this. Your Honor made reference with respect to the subsequent similar acts regarding Mr. Tate without mentioning his name.

THE COURT: I did that intentionally.

MR. COHEN: I realize that and I thank the Court for it, because you did attempt to take the sting out of that particular situation.

[4188]

I am concerned, though, and I am reiterating my concern basically as an objection to its introduction and I think in summing up to the jury, the Government referred in its original summation to the subsequen tsimilar act and the statement in its original summation. I omitted reference to those aspects of evidence in my summation to hopefully avoid any rebuttal by the Government. The Government notwithstanding rebutted or reiterated, rather, its position and mentioned the subsequent act and the statement and of course your Honor mentioned it also in the charge to the jury.

I am respectfully indicating, your Honor, as far as Mr.Tate is concerned, that evidence is highly prejudicial, not only because of its content but because of its remoteness and I therefore reiterate the prior objections that I had.

THE COURT: Anyone else?

MR. SIEGEL: Your Honor, the only point I am going to make, I am in a similar position as Mr. Goldberger and for the record, I will join with Mr. Goldberger's exceptions and requests.

MRS. PIEL: I have a few.

Your Honor, I don't recall hearing when you gave your instruction on standards of credibility that a

witness could be impeached by conviction of a felony. I believe you gave the other aspects as to impeachment of credibility but I don't remember that.

THE COURT: I thought it was in there.

MR. ENGEL: For the record, I remember it.

MR. GOLDBERGER: It is clearly in the record.

MRS. PIEL: I want to join with Mr. Goldberger with regard to guilt or innocence. I remember a particular turn of phrase although your Honor said other things afterwards that were different. You said guilt or innocence must be determined which suggests they are determining innocence.

THE COURT: I understand your exception.

MRS. PIEL: It is not clear to me that the jury was told that the conspiracy must be established by the acts of the individual defendant whose connection to the conspiracy is to be established separate from any other kind of hearsay. It is not clear to me it was put to them clearly and I am not sure whether or not it isn't a Genay issue for the Court anyway, but since the Court did not take a position on it, it seems to me we are left in a never, never land on that issue.

Then it seems to me --

MR. ENGEL: Mrs. Piel, what do you want the Court to do with respect to the Genay issue?

[4190]

MRS. PIEL: It is my understanding of Genay that the Court has to make a determination that the conspiracy was established independent of any of the hearsay statements of other persons prior to giving the case to the jury. All of that is in there like a big package and I don't think it is proper to be given to the jury, but I don't know what else to ask for at this point except some such instruction.

MR. GOLDBERGER: I have to object. I certainly don't want the Court instructing the jury at this time that the acts have been connected up in any way, shape or form and I will object to Mrs. Piel's request.

THE COURT: I will not give such an instruction.

MRS. PIEL: Although your Honor did refer to it, it seemed to me glancingly, it is not clear to me whether or not the jury is clear that the subsequent statements of the alleged co-conspirators in no way reflect upon the other defendants in the case.

Now, it is true your Honor said something about being used against them,but I am not sure the conspiracy doctrine isn't one where somehow the jury might infer those subsequent statements can be used against the persons who did not make them.

Then I want to take exception to the problem

which arises because of what your Honor said about the act or the incident does not have to happen at the precise time alleged in the indictment.

Although that may be true, it has to happen pretty near to it where you don't have any kind of fair warnin what the events are and I don't hink your Hoor made it clear to them it can't be alleged in one year and happen in another. That happens to be quite a problem in my case because Pannirello repeatedly kept saying that whatever he said the defendant Wesley's involvement in the case was, he first met him in 1972 when it was supposed to have happened in 1971, and I don't think that will be adequate and therefore I don't think the jury -- maybe it doesn't have to happen on September 1st, but it had to happen a few days after September 1st or a few days before, but not a year before.

It is my hope your Honor will make some kind of statement when you hand the jury the special instructions that by having that business about whether or not they entered the conspiracy before or after does not import any opinion on your part as to their entrance into the conspiracy at all, and lastly, your Honor gave them an instruction with regard to the substantive count involving Basil Hansen, whichever one that is, saying that the

jury should not consider that act as part of the conspiracy. It seems to me the same considerations apply to the overt act involving Mr. Siegal's client, Mr. Smith, because there was no evidence to connect up Mr. Smith with any of the other co-conspirators and therefore it seems to me appropriate that a similar instruction should have been given and I have concluded my exceptions.

THE COURT: Your exceptions are noted.

MR. SIFFERT: May I state something on the variance issue.

THE COURT: No.

MR. SCHWARTZ: Your Honor, I had made an oral request the o ther day concerning Al Green that both the indictment as to the first count and the substantive count indicated that Al Green came into the conspiracy on or about January of 1972, and then Mr. Engel pointed out to the jury that Al Green was one of the individuals who the Government was attempting to prove entered the conspiracy before May 1, 1971.

If your Honor is going to allow that sheet to the Government, I guess everybody will be inthe same boat, fine, but if your Honor were to follow Mr. Goldberger's motion, then I think Al Green would be very prejudiced.

Number 2, in one of my requests I asked in

substance your Honor to charge that if the jury didn't believe that Al Green was proved guilty beyond a reasonable doubt, through either the testimony of Provitera or Pannirello or both, then in that event they must acquit.

Since you have deleted the use of all names here, that was the change, and I take exception.

THE COURT: Okay.

MR. WEISSFELD: On behalf of Mr. Turner, I believe your Honor had stated that one of my particular requests would be intact, and I believe that was the one about an isolated transaction is insufficient to convict.

I didn't hear the thing come in exactly as I phrased it, but I wasn't sure.

THE COURT: You have to understand, Mr. Weissfeld, and you too, Mr. Turner, I can't do it in somebody else's language. Believe it or not even my law clerks try to tell me what language to use and I try to do it the best I can.

MR. MATEDERO: I would respectfully except to so much of your charge when you said if you find the defendant acted with intentional disregard of or with conscious purpose to avoid learning the truth, then I couldn't catch the next few words, the requirement of knowledge is met.

[4194]

I don't think that fits the facts of the case.

THE COURT: Okay. Your exception is noted.

MR. CIAMPA: No exceptions, your Honor.

MR. SCHMUKLER: As long as I am sitting. I wanted to reiterate my previous objection to join Hansen on Counts 14 and 13 in the conspiracy count.

MR. LEVNER: No exceptions.

MR. ENGEL: Judge, it is not an exception. When your Honor said that there was a unanimous verdict as to guilty, but you din't say a unanimous verdict as to not guilty.

THE COURT: They can figure it out.

MR. SCHMUKLER: May we see the redacted indictment?

THE COURT: As soon as I get it.

(In open court.)

THE COURT: Ladies and gentlemen, during the charge I mentioned that some of the defendants were out on bail. I guess I misspoke a little bit because some of them there was no bail set and I am the guy who didn't set the bail. They showed up anyway and that is what counts.

MR. SCHMUKLER: Your Honor, there was a matter I neglected to take up inside. If your Honor would

permit, may we return to the robing room for a brief application?

THE COURT: Sure.

(In the robing room.)

MR. SCHMUKLER: Frankly, Judge, when Mr. Goldberge summed up that particular juror, during Mr. Goldberger's summation, when he mentioned would you convict on a particular set of facts, that juror was observed by several of us to nod her head in the affirmative. She showed what looked to me was visible contempt during parts of Mr. Siegal's summation and frankly, Judge, the feeling we have had toward her during the last month and a half with counsel complaining about her, it was evidence from her contenance throughout the summations. The only time she showed happiness and rapture was when Mr. Engel rose.

THE COURT: That is not true. I thought she fell in love with Paul Goldberger and jilted Tom Engel and I can't understand why she would prefer either one of them.

Motion denied.

(In open court.)

THE COURT: Mr. Pravda, I am kind of sorry in view of the fact there is talk there is going to be a transit strike you are not going to stay with us.

You have been a delight to have on the jury and all of us, Government counsel, defense counsel and the defendants appreciate just what you have done, but there are only going to be 12.

Do you have anything in the jury room.

All right, marshal, you took an oath before to keep the jury separate and apart. I am sure you will.

Does anyone here object to me deeming that oath to be taken by the other marshals who might be involved?

MR. GOLDBERGER: No, your Honor.

MR. WEISSFELD: No.

MR. LEVNER: No.

MR. SCHMUKLER: No, your Honor.

(At 5:10 P.M. the jury began its deliberations.)

MR. GOLDBERGER: May I inquire of the Court what your Honor's plans are as far as scheduling goes, the jury dinner and so forth.

THE COURT: Let them get settled first. I will send them out with the marshal.

MR. GOLDBERGER: Can you tell us what time you will be doing that?

THE COURT: 6:30.

MR. GOLDBERGER: Does your Honor have plans to

[4197]

sequester the jury?

THE COURT: No.

MR. GOLDBERGER: You will definitely send them home?

THE COURT: Yes. Is anybody going to do anything to them?

MR. SCHMUKLER: Tennessee Dawson will crack their safes.

MR. LEVNER: How long will dinner be?

THE COURT: 6:30 to 8:00.

(Recess.)

d 2B

REFERENCES SUPPORTING BRIEF OF

AL TAYLOR

I am here to offer some comfort, but she is not here to give me that.

THE COURT: She is not here to let you comfort her?

MR. FELDMAN: Or the other way.

MR. WEISSFELD: If your Honor please, on behalf of the defendant Turner, he reported this morning that four jurors saw the individuals being led in in handcuffs on the third floor.

THE COURT: I know nothing about it.

MR. WEISSFELD: It happened this morning.

THE COURT: Mr. Wesley, what is the situation with you right now --

Ms. Piel, maybe you know.

MS. PIEL: I would just as soon your Honor ask Mr. Wesley. I don't really know, other than what he has told me, and it's not too clear to me.

DEFENDANT WESLEY: What happened, your HOnor, I was in Washington Saturday. I was arrested on a warrant which was a mistake, which has been straightened out. It was a mistake in the parole office, so I don't know what is happening. They transferred me to three different institutions. Every day they transferred me to another institution.

MR. LEVNER: We have not addressed ourselves to the initial problem of this being the second incident in which jurors have seen the prisoners -- the defendants being taken into the courtroom with handcuffs.

I advised Mr. Engel when I made this motion before the Court that there were two occasions, and I again spoke to Mr. Engel in the back of the courtroom, describing one of the marshals who on the first occasion was present when a juror saw Mr. Ramsey, Mr. Turner, Mr. Taylor and Mr. Hansen handcuffed.

MR. ENGEL: Your HOnor, I'm sorry to belabor this.

The prior incident was an incident which happened in the courtroom when the defendants were led in one after another. There were no handcuffs. The objection was there were other people.

Your Honor I think very carefully observed the other marshals at that time were black and indistinguishable from the defendants.

MR. LEVNER: That is not the incident I'm referring to, although that did occur. I'm talking about the main set of elevators when court was held on the first floor in Room 110.

MR. ENGEL: I don't remember that.

[2719]

THE COURT: Okay.

MR. CIAMPA: It's not a question of whose fault. It is only a question of prejudice.

THE COURT: I understand. I am not going to point a finger at anybody.

The very fact that the defendants may be brought in in handcuffs, I don't think is sufficient to prejudice the jury. Various motions for a mistrial are denied.

Take a look at what happened in United States v. Bentvena.

MR. CIAMPA: May we have an instruction then, Judge?

MR. LEVNER: Let's think about that. Can we just think about that?

THE COURT: Sure. Go ahead.

(Pause)

MR. CIAMPA: Your Honor, I have an instruction for my client, Taylor. Apparently he was quite visible and in handcuffs.

The instruction I would request is that not all of the defendants are financially able to meet their bail and the fact that they might have appeared to some members of the jury in handcuffs is not to -- they are not

MR. ENGEL: That means he is a readl doctor,Mr. Goldberger.

THE COURT: All right. Mark it as a Court exhibit.

xxx

(Court Exhibit 3 marked.)

THE COURT: Mr. Levner.

MR. LEVNER: Before cross-examination, I was wondering if the Court would resolve that motion which is before it with reference to a sale allegedly made by Mr. Ramsey to Mr. March, according to the bill of particulars in February of 1972, but according to the testimony of the witness, November of '71.

THE COURT: Iwill permit the testimony to stand. We do have something else that has got to be cleaned up.

Mr. Ciampa.

MR.CIAMPA: Your Honor, I would like to make a motion as to the convenience of this forum and I would also like to tie in with that a certain variance between the testimony we have heard and the indictment and bill of particulars.

The testimony is that the incidents relating to Al Taylor occurred in the northeast section of Washington. I cite the Court to page 1003, line 19, where the witness stated 12th Street, N.E.

Again at page 1001 -- it is either 8 or 9 --

I am sorry, I am fumbling. I just got the minutes, your Honor. I noted the testimony yesterday. Perhaps we can rely on the Court's recollection. The first page citation is correct.

The second incident relating to Taylor is also placed in the northeast section of Washington.

I refer the Court to Overt Acts Nos. 33 and 34 in the indictment where the northwest section of Washington is stated to be the locale of the particular overt acts.

Your Honor, that is a substantial variance.

I am also at considerable difficulty to investigate the location to test this witness' recollection and/or veracity since this particular trial is in New York.

Those two factors together, I think, are substantial prejudice to the defendant and I am completely surprised at hearing "northeast." My first apprisal of these incidents is northwest section of Washington.

Now it turns out the incidents are placee in the northeast sectionof Washington.

I saythat is a substantial variance, yourHonor.

THE COURT: I don't believe it is.

When is the last time you were down in Washington?

MR.CIAMPA: 1955.

THE COURT: Just a thought. It is not a substantial variance.

MR. CIAMPA: What about the forum non-convenience?

THE COURT: No, we have gone too far down the path on this one.

MR. CIAMPA: Your Honor, may I just be heard on that point?

This points up a difficulty with all incidents occurring in Washington except a certain part of the conspiracy which is alleged to have occurred in New York, which is really the Tramunti case, and the case against Robinson, who is not a defendant.

All other incidents are Washington, D.C. All the witnesses at my disposal would be in Washington, D.C.

I want to point out that I was assigned a couple of days before the trial, and as far as my ability to physically investigate any of the witnesses, any of the locales, I can't test the veracity of any witness. I really can't do a job in cross-examining. He says northeast, northwest. I don't know what any place looks like. I think that is what the spirit of forum non-convenience is all about. I don't know why this case is in New York.

THE COURT: The rule is if the forum is convenient to some of the defendants, then they are all stuck with it.

MR. CIAMPA: Which defendants would it be convenient for?

MR. SCHMUKLER: Exactly two in number, Judge.

THE COURT: That might be. Two is enough.

MR. ENGEL: Three, I believe, for the record.

THE COURT: Three, all right.

MR. CIAMPA: May I hear the Government's recitation of the three defendants for whom this trial is convenient?

MR. ENGEL: Actually for all the defendants in custody on other cases. That would exclude your client. The matter is moot.

For Miss Barber and Mr. Green, as residents of the New York City metropolitan area, that is convenient for them, rather than convenient in Washington.

As I say, except for Mr. Turner, Mr. Ramsey being in custody on other cases, it would be irrelevant as to them. Until Mr. Robinson was severed on the morning of trial, it was convenient for him.

THE COURT: Okay.

MR. CIAMPA: My understanding, your Honor,

of forum non convenience, not to belabor the point, is not that it is convenient for the defendant to attend trial, it is the convenience of the defense, not the proximity of the defendant to the courtroom. It is the fact that the jurors don't know where any of these locations are, neither do defense counsel; witnesses are not at our disposal, and so forth and so on.

I don't think that the Government has answered the objection adequately by pointing out that there are, in fact, three defendants who live in New York. That's not the spirit of that particular law.

THE COURT: All right.

Your motion is denied.

MR. POLLAK: Your Honor, I have a similar application. Of course I join in the application by counsel.

With respect to Overt Act 32, I have a similar objection. The indictment alleges that that overt act was committed in one location. The bill of particulars states a different location and indicates that there was a transaction with a John Doe, also known as Alvin, and the testimony by the witness March, who obviously is the witness' only witness as to this, indicates a different type of transaction, only indicates a pickup of money rather than delivery of heroin, and indicates still a third

Q And you have gotten expenses?

A Yes, sir.

Q You don't know what the total of those sums is, is that correct?

A I don't have any idea.

Q You mentioned a man by the name of Moochie.

Who is he?

A He was a friend of mine.

Q WAs he up herein New York recently?

A I think so. Yes, sir, he was.

Q Were you staying at a hotel while he was up here in New York?

A Yes, sir.

Q Was the number of that hotel CI6-5000?

A I don't have any idea. CI6-5000, I don't have any ide- what that is.

Q What hotel were you staying at?

MR. ENGEL: Objection, and move to go to the side bar, your Honor.

THE COURT: Yes.

(At the side bar.)

THE COURT: Most likely it will come out that this guy is in protective custody right now.

MR. CIAMPA: I aj talking about a few weeks

MR. LEVNER: Thank you, Judge.

THE COURT: Running down just these items, I will make renewed writs or affidavits for Cornelius Garner, James Kelly, and will attempt to get in touch with Miss Clagget and subpoena the parents of Renee James.

Mr. Robinson is in custody here in the Metropolitan Correction Center.

Does anybody request that I do anything about that situation?

MR. GOLDBERGER: Yes, I request that Robinson be brought to court at some convenient time in the Government's case so that we can further hear from Robinson whether he will or will not testify.

MR. CIAMPA: I would request an interview with Mr. Robinson as well.

MR. ENGEL: Do I have to do anything about that situation? That's what I am saying.

THE COURT: Just arrange to have him brought over, that's all.

MR. ENGEL: Brought to court?

THE COURT: Yes.

MR. ENGEL: Okay. Fine.

THE COURT: It's across the street; it's no great strain.

don't know whether the subpoena has been served. The United States attorney says there is a return and they don't know when it is.

THE COURT: That is two.

MR. MATEDERO: Manoda Claggett, whenever the Government can get her.

THE COURT: Who knows if anyone can get her at this point.

Didn't we have that girl's parents in here?

MR. ENGEL: That was a different girl. We are having equal trouble with her too.

MR. CIAMPA: I wouuld like to call Warren Robinson out of the presence of the jury and just put on the record -- I realize the motion for several has been denied, but I would like to establish on the record that he was called and to ok the Fifth.

THE COURT: All right. We have to wait until Mr.Fisher gets back from the Eastern District.

MR. CIAMPA: I can do that at any time.

I would also like to call Cornelius Garner who Mr. Engel informed me would be around the end of the week.

MR. ENGEL: I checked with the marshals when I arrived at my office the first thing, and they were arranging airplanes for Garner and Kelly from Atlanta and

[2624]

to call as a witness, whose whereabouts are yet unknown.

MR. ENGEL: The witness is in the witness room. I can ask that, Mr. Matedero. Do you want me to see about that, your Honor?

THE COURT: Sure.

MR. CIAMPA: Before we do that, your Honor, for the record, Moochie -- I believe there was an agreement weeks ago to produce the witness Garner, also known as Moochie. Perhaps if I could have half an hour with Moochie, half an hour with Robinson, then those two witnesses -- if no one else is ready to proceed, and if I do, in fact, decide to elicit testimony, that could take part of the morning, too, your Honor.

MR. ENGEL: I'm sorry to burden the Court further, your Honor, with these housekeeping details. Believe me, they are a burden to myself as well.

Mr. Garner, I think I had told defense counsel earlier if they wanted to call him, to let me know and I would try to make him available. Mr. Ciampa is now letting me know --

MR. CIAMPA: No, that's --

THE COURT: Wait a second. I'm not going to get into it. Where is he?

MR. ENGEL: That's what I'm about to find out.

I think, and I'm not sure, he's in the federal reformatory in Petersburg, Virginia.

MR. CIAMPA: For the record, I can get the page citations, your Honor, on several occasions I informed the Government --

THE COURT: Mr. Ciampa, come on. We are not getting into personalities.

MR. CIAMPA: I'm not, your Honor.

For the record, this isn't the first time I mentioned Moochie.

MR. ENGEL: I didn't say it was.

THE COURT: We will try and see what we can do to get this thing rolling.

MR. ENGEL: This will just take a second, your Honor.

(Pause)

(Continued on next page)

[3424]

further. Those of you who came in before may have noticed that it was curtailed.

Is that true?

MR. ENGEL: Yes, sir, that would certainly be true.

MR. SIEGEL: I would concur in that.

MR. CIAMPA: There might be a witness. I asked for Cornelius Garner to be produced. I think Mr. Engel suggested he be here Friday.

MR. ENGEL: I have the writeup. I checked with the marshals Wednesday morning and they were flying him up I believed on Wednesday.

MR. LEVNER: Kelly should be here, too.

MR. GOLDBERGER: I have an application. My application is as follows: I have a stipulation that Mr. Engel and I have entered into which I will recite to the jury, if it's all right with Mr. Engel. Then I believe that Warren Robinson has to be called to complete the record. We had called him before.

Other than that, I would ask the Court to rest the entire defense. I think at this point other defendants who are not calling witnesses are being prejudiced by the fact that there are these delays that certainly the jury at this point is attributing to

MR. CIAMPA: May I be heard, your Honor?

As to Cornelius Garner, I would like to say that I asked for that witness weeks and weeks ago, and he is in Government custody.

THE COURT: If he's around the corner, see him this afternoon.

MR. CIAMPA: I believe he's not here. I don't believe he's in New York.

Is that correct?

MR. ENGEL: I don't know, Mr. Ciampa.

I would like to lay a record here about what the Government has done. The Government has done everything it has been asked to do by the defense in this case. It has issued subpoenas for defense witnesses, it has made efforts to call defense witnesses who have been under subpoena, it has issued writs for defense witnesses at the time that the requests were made.

Mr. Ciampa made a request, and I asked him to renew it at the time he thought he would call him. This was early in the trial. He renewed it a week ago Thursday morning, and I got the writ up on Friday afternoon for your Honor's signature, if you recall.

THE COURT: That is the writ without the affidavit.

I guess, the press of other matters, it was not sent by the Government yesterday. It is going to be sent today.

MR. CIAMPA: Your Honor, I hate to belabor the point and I am not suggesting that Mr.Engel has been uncooperative. However, I would like to point out that on at least five occasions throughout the trial, I have asked the Government to produce one Cornelius Garner, who when I first request was at M.C.C.

THE COURT: He might be right around the corner right now.

MR. CIAMPA: I know you want us all to rest on Monday. I want to alert you on behalf of my client, if he has not been made available for me, I will have to move for a continuance on Monday.

THE COURT: Find out what is going on, Mr. Engel. Call up right now.

MR. ENGEL: Yes, I will.

MR. LEVNER: Also Kelly.

THE COURT: There might be a marshal in the room that knows.

THE MARSHAL: No, your Honor.

MR. ENGEL: Your Honor, there is one more stipulation with respect to Mrs. Piel and her client's incarceration beginning in September -- the fact he

that I was available in my office thereafter, but in any event, the Government's position is set forth in that letter.

I would ask Mr. Ciampa what his application is with respect to how many days or what kind of continuance does he want.

MR. CIAMPA: Your Honor, I think I need a week to prepare for this case.

As is, the main thing is, I didn't get the facts from my client until late Saturday afternoon of last week.

MR. ENGEL: Your Honor, with respect to the application, it seems to the Government that Mr. Ciampa stands very much in the shoes of many of the lawyers. Mr. Siegal for Mr. Smith came in last week, and Mr. Ciampa had the 3500 material with respect to the first weekend over the week. The first witness Mr.Dawson, the 3500 material was available Friday afternoon and many of the counsel came and picked it up, among them, Mr. Ciampa.

For those that haven't picked it up, it was available this morning.

In any event, Mr. Ciampa's request for a continuance for a week is opposed by the Government unless Mr. Ciampa makes a showing, that he intends to call alibi

(Mrs. McDonnell leaves the courtroom)

THE COURT: I must say I never thought I would do this. You had better believe that you are in the midst of picking a jury, all of you. You are actually engaged in picking a jury. Do you understand?

Mr. Ciampa, I assume that at this point you renew your request for some more time; is that correct?

MR. CIAMPA: Yes, your Honor.

THE COURT: You have until Thursday morning at 10:00 o'clock.

Let me suggest to the defendants, you are supposed to be here at 10:00 o'clock. What I might do if one is missing is remand everybody.

MS. PIEL: Your Honor --

THE COURT: If I remand everybody, you'll all be in the same cell block.

MS. PIEL: I only want to address myself to the adjournment which is at 10:00 o'clock on Thursday. I'm supposed to be in the Second Circuit at 10:30.

THE COURT: That's all right. We will work it out. Don't worry about it.

MS. PIEL: You will understand?

THE COURT: Oh, sure. If you give me a little advance warning, we'll work it out.

court today.

MS. PIEL: That is correct.

Q Directing your attention to September of 1971, thereabouts, did you have occasion to see Al Taylor?

A Yes, I did.

Q Where?

A Mount Pleasant Street, Park Row.

MR. CIAMPA: May I have the question before this one read back, the answer to the question before the last?

THE COURT: Sure.

(Pecord read)

Q Prior to seeing him at Mount Pleasant Street, had you seen him earlier that day?

A Yes.

Q Where?

A At the store.

Q Did you have a conversation with him?

A Yes, I did.

Q Was anybody else present at the conversation?

A No, there wasn't.

Q Who said what to who?

A He asked me about Warren's whereabouts.

I told him I didn't know.

He said tell Warren he wanted to see him, and I said okay, and he left.

Q Thereafter, did you have occasion to have a conversation with Warren Robinson?

A Yes, I did.

Q Where?

A At the store.

Q Will you tell the jury who said what to who, to the best of your recollection?

A I told Warren Al came up to the store to see him.

He said, "What did he want?"

I said I don't know, "He wanted you to come and see him."

He said, "He hadn't paid me for the other package yet. We will go over there this evening and see him."

Q When you got to Mount Pleasant Street, what time was it?

A It was in the evening.

Q What happened when you got there?

A We drove into the driveway besides the apartment building.

Warren and myself went in the apartment building

to the top floor.

Q Would you keep your voice up and not drop at the end of the sentence?

THE COURT: Read back the last answer.

(Record read)

Q What happened when you got to the top floor?

A Al Taylor let us in.

Q Was anybody else present in the place?

A Warren, Al Taylor, myself and Al's old lady.

Q Was there a conversation at that time?

A Yes, there was.

Q Who said what to who?

A Warren and Al was discussing money owed and the package he had brought with him.

Q What package?

A The package that Warren and myself had brought.

Q What was in the package?

A An ounce and a half of heroin.

Q Then what happened?

A Warren and Al talked some more.

Warren gave Al the package; Al gave Warren some cash.

Q Do you know how much cash?

A No, I don't.

Breda Hines or Breda Wells occupied an apartment at 3348 Mt.Pleasant Street from May of 1970 through December of '71; is that correct?

A Yes.

Q So, based on the business records, Breda Hines-Wells lived at 3348 Mt. Pleasant Street in September of 1971; would that be a fair statement?

A Yes.

Q Can you tell me which apartment that was? ,

A 3348, I think it was Apartment 1.

THE COURT: I'm sorry. I didn't hear the answer.

Read it back.

(Record read)

Q Can you tell me, Mrs. Goldring, where Apartment 1 was located in that building?

A According to the records, it's the basement, first floor.

Q Basement, first floor?

A Yes.

Q Did you ever know whether the defendant Al Taylor paid you rent for Miss Hines?

A At any time?

Q At any time.

Do you want to see them?

THE COURT: Yes.

Bring in the jury.

MR. CIAMPA: Are the minutes going to be changed?

THE COURT: I don't know yet.

After I read the notes, I will tell you whether the minutes will be changed or not.

(Jury present)

THE COURT: Ladies and gentlemen, I hope you are all very well today. I told you the reason why we did not sit yesterday. It is the custom in people of my ethnic background that they also attend what is called a wake before the funeral, which I did, which left me with having to clean up certain motions today. They are just about done, but I figured you might be getting lonely out there.

We are going to have summations start this afternoon. I wanted to tell you before lunch that it may occur that we might go a little later than usual today.

Let me tell you about the way summations occur.

The Government starts off first, and after the Government then defense attorneys have the opportunity to sum up.

heard. I don't care what the typist and the reporters, Southern District Court Reporters' pool does. It's the testimony that the jury heard.

MR. CIAMPA: The point is, your Honor, I presume I have leave to read from the printed minutes which have not been altered prior to just now. I believe the Government's motion to change those minutes is no longer seasonable if that application comes at this time.

I assume that I can read that particular testimony which is in the minutes on which Irelied to a great extent in bringing witnesses from Washington to show the whereabouts that that particular printed testimony refers to.

I think that if that were not the case, then I must have leave to reopen my case, recall the witnesses.

THE COURT: Let me think about it.

MR. SIEGEL: Your Honor, if it may please the Court, referring to the trial transcript 3705, Mr. Engel's summation yesterday dealing with the narcotics that were previously admitted, on Line 15, 14 and 15, the minutes indicate that Mr. Engel referred to these items as being part -- the end product of this particular conspiracy.

It was my recollection that the Court admitted this particular evidence just as far as the substantive

MR. CIAMPA: The way I suggest that it be solved, if I may be heard on that point. When it appeared that there was an error --

THE COURT: I can't hear you when you walk away.

MR. CIAMPA: When it appeared that there was an error in the printed minutes, if there was, in fact, an error in the printed minutes, and that September 1971 was supposed to be September 1972, the Court will recall I moved to reopen my case on the ground that the defendant had been serious prejudiced by this error and that I had called witnesses to testify about the location of this delivery at the time that appeared in the printed minutes.

I suggest a way to solve this problem to the satisfaction of all parties concerned would be for the Court to read 1018 as September 1971, read that date, and then Mr. Siffert has a suggestion of reading the redirect where it is corrected to September 1972. I would not object to reading both. If the Court were going to change page 1018 at this point --

THE COURT: I am not going to change it.

MR. CIAMPA: Thank you.

THE COURT: We had during summation a certain amount of discussion about this.

the delivery to the Mount Pleasant Street apartment.

THE COURT: Is everyone agreed that Ms. Goldring's testimony, the complete thing, is going in?

MR. CIAMPA: Yes.

MR. ENGEL: Yes.

THE COURT: Is everyone agreed as to March's testimony?

MR. SIFFERT: The following pages, if I may for the record, your Honor:

Transcript 1018, Line 3, and I still don't know whether that will be read as 1971 or '72 --

THE COURT: It's going to be read the way it's written, and then I'm going to comment on it.

MR. SIFFERT: -- through Transcript Page 1020.

The cross on this point appears at 1098, Lines 12 through 20, and the redirect on this point appears at Transcript 1253 through 1254, Line 23.

THE COURT: All right.

(Jury present)

THE COURT: We are going to have some testimony read back, ladies and gentlemen.

Rather than having any lawyer read any part of it back, I'm going to have the court reporter read it back, and he's told to read it back flat.

[4213]

Take Ms. Goldring first.

MR. CIAMPA: Could we have Ms. Goldring last, since that's the order it came in? It relates to the last thing the jury wanted to hear about.

THE COURT: It's the longest part of it. Let's read her first.

(Record read)

MR. CIAMPA: Your Honor --

THE COURT: I hear you.

MR. CIAMPA: May I approach the bench, your Honor? It's a very simple matter. I think the Government's transcript is different.

THE COURT: Than yours?

MR. SIFFERT: That includes the change, your Honor, talked about.

MR. CIAMPA: There is an ink change of the last digit.

THE COURT: All right.

Ladies and gentlemen, the way the transcript now reads is "Directing your attention to September of 1971, thereabouts, did you have occasion to see Al Taylor?"

The answer is "Yes, I did."

There was some dispute as to whether the question was directing your attention to September of 1972

or of 1971.

I went so far as to take out the hieroglyphics that my friend here, the court reporter, passes off for his notes, but I don't consider it a ruling for me to make.

You folks sat there through all this testimony and you heard it as well as I did, and you heard it as well as Mr. Engel and Mr. Siffert and Mr. Ciampa did. Whether it's '71 or '72 is up to you to decide.

Go back in your own recollection and see which it is.

MR. SIFFERT: May we be heard on this, your Honor?

THE COURT: No.

MR. CIAMPA: May I have that back, your Honor?

THE COURT: Sure (handing).

MR. SIFFERT: There is no indication of what those notes reflected, your Honor.

MR. CIAMPA: Your Honor, I object.

THE COURT: No way. I don't care what they reflected. I'm not going to take the witness stand, nor are the reporters.

It's up to you folks. Go back in your own

[34]

MR. SCHWARTZ: Frankly, I just want to hear what is being said.

THE COURT: Sure.

Mr. Matedero.

MR. MATEDERO: Five to ten minutes, your Honor.

THE COURT: Okay.

MR. GOLDBERGER: Judge, I have an application.

On the basis of the Government's opening, I wish to renew my motion to sever.

Taking the Government's opening on its face, Warren Robinson again becomes an absolutely crucial key witness for Miss Barber. Mr. Engel said that her apartment was used as a message center for Robinson, and she kept cutting materials there for Robinson, and this was her participation in the conspiracy.

The only person outside of Miss Barber herself who had some difficulty with the question of his testifying, testifying on her behalf, is Warren Robinson.

Now, before this, Judge, we didn't know what the Government's case was involving Ernestine Barber. Now there are no other additional witnesses for me to call.

I would ask the Court to sever Miss Barber so we may be tried after Mr. Robinson --

THE COURT: I will think about it.

MR. MATEDERO: Your Honor, with respect to defendant Miller --

THE COURT: You join.

MR. MATEDERO: -- I join in that. I can't say that will be the only witness.

MR. SIEGEL: I have an application with regard to Count 12 of the indictment.

Mr. Engel, in his opening, he omitted any mention of Mr. Ferguson's involvement in Count 12 of the indictment. That is a transaction on or about April 1972. Therefore, I would move to have that count of the indictment dismissed.

THE COURT: Motion denied.

MR. WEISSFELD: I will join in the motion to sever on behalf of Turner, your Honor.

MR. CIAMPA: Taylor joins as well, your Honor.

THE COURT: You all join.

MS. PIEL: Your Honor, I want to make a motion on behalf of the defendant Rufus Wesley similar to that of Mr. Goldberger's. I have been informed by my client he has had some conversations with Mr. Robinson, and that if Mr. Robinson -- he is under the impression that if Mr. Robinson were to take the stand he would clear Mr. Wesley of the count, the overt acts and the counts that he is charged

motions anyway.

I would ask the Court to have a conference with -- I believe Mr. Ciampa will be part of that conference with Mr. Fisher, and the prosecutors, to resolve the problem, rather than come back tomorrow morning with Mr. Robinson.

I am not sure what Mr. Fisher's schedule is, and I know he has to be here while this has to be discussed, and I don't know if he would be available tomorrow morning, and I would ask the Court to hear that now, possibly in the robing room.

MR. CIAMPA: While it is fresh in my mind, having just come back from Mr. Robinson, I would like to put the following on the record.

I spoke just now to Mr. Robinson in the robing room in the presence of Mr. Goldberger, Mr. Fisher and the United States marshal sitting in there right now, whose name I don't have.

I asked him two questions. I asked him, "Did you ever give any narcotics to Al Taylor?", and he said, "No."

I asked him, "Did Al taylor ever give you any money? Did he ever buy any narcotics from you?", and he said, "No."

I asked him, "Did you ever tell Tennessee Dawson or James March that Al Taylor ever purchased narcotics from you?", and he said, "No."

I think that that statement is analogous to the affidavit that Mr. Goldberger has. That is the testimony that that witness would offer if he could testify.

Now we can hear from Mr. Fisher as to whether he will or won't testify or what the problem is.

THE COURT: We have, according to my count, two motions yet to be made.

Mr. Weissfeld.

MR. WEISSFELD: Your Honor, I would make the motion, if your Honor would permit, of counsel for Mr. Turner.

DEFENDANT TURNER: Yes, sir.

THE COURT: Yes.

MR. WEISSFELD: At this time, under Rule 29, the defendant Turner wishes to move to dismiss the indictment for insufficiency of evidence.

He further wishes to move to strike Count 10, the substantive count of the particular indictment, on the ground that such count must be proven by direct or circumstantial evidence, and that in this instance it

matter being, as I understood, the equivalent of subpoenas for his testimony on behalf of Ernestine Barber and the defendant Al Taylor.

I can represent to the Court, as to each of them, he has told me and each in the presence of their respective attorneys that his evidence would be totally exculpatory vis-a-vis the specific nature of the charges and the proof adduced by the Government of those witnesses.

Notwithstanding that fact, he will insist upon the assertion of his Fifth Amendment privilege at these proceedings.

With regard to his position at some subsequent time and some subsequent situation, I can't advise him and because I can't advise him he cannot so state.

MR. ENGEL: Why can you not advise him?

THE COURT: Because he doesn't know what is going to happen.

MR. ENGEL: I realize that, but the question is whether or not he will invoke the Fifth Amendment privilege were it not for his joinder in this case. That is the question, Mr. Fisher, and what is your answer?

MR. FISHER: The answer is, he has a Fifth Amendment right to refuse to testify so long as the present

[3126]

MR. CAMPA: Yes.

THE COURT: Anybody who wants to come, come.

(Recess.)

(In the robing room.)

THE COURT: A robing room conference is being held in which Mr. Warren Robinson is present and also Mr. Ivan Fisher. Certain defendants have requested the defendant Warren Robinson to testify in their behalf.

Mr. Fisher, who has represented Mr. Robinson now -- for how long?

MR. FISHER: I think at least six months, your Honor.

THE COURT: Okay -- has come in and made certain representations. Rather than do it again, I will have Mr. Fisher say what those representations are.

MR. FISHER: If your Honor please, in response to the equivalent of subpoenas in behalf of Messrs. Taylor -- Mr. Taylor and Ms. Barber, warren Robinson would assert before a jury his Fifth Amendment right if called to testify before a jury.

He would, however, obey an order of the Court that would direct him to testify in any proceeding where such an order were given. By that I mean obviously that the pending charges against him gave him an unqualified,

[3131]

MR. CIAMPA: It wasn't on the record.

MR. FISHER: He didn't do it directly. He didn't do it indirectly.

MR. CIAMPA: Okay.

MR. FISHER: One further thing with the automobile that he admits he gave to the defendant Barber. It was a very old car, it was worth someplace less -- considerably less than $1,000 at the time it was given to her, and it was given somely as a result of and growing out of the personal relationship with Ernestine Barber and had nothing to do with any kind of narcotics involvement on her part.

He would further testify that his future plans with regard to testimony cannot be as explicitly stated at this time, except to state that if directed by a Court to testify in any proceeding, he would do so, meanwhile asserting whatever rights the Constitution and our law allows him.

THE COURT: All right.

Anybody else?

MR. SIFFERT: There was something stated off the record which I think should be included in Mr. Fisher's statement, and that is that this testimony under middle position immunity would be given only if the conditions

Q Who was Fred Scott?

A A junkie I had known at Eleventh and O Street. We used to give it to him to test the narcotics.

Q At the time you received this sample or shortly thereafter, rather, did you have occasion to see Little Pete?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q What did he say?

A He told me the narcotics were all right, but if you were ready to sell them -- you couldn't cut them until you were ready to sell them, otherwise they would die. The cut would kill them,they were synthentic.

Q Where did you see Freddie Scott?

A I saw him at Eleventh and O Street, N.W.

Q What happened when you saw him?

A He asked me did I have any more. He said it was a bomb, but it did not last very long.

Q On the same occasion when you saw Freddie Scott in the vicinity of Eleventh and O Streets, Mr.Dawson, did you see anyone else?

A Yes, sir, I did.

Q Who did you see?

A Al Taylor.

Q Where was he?

A He was standing there in the 1300 block of Eleventh Street waiting until I got through talking with Fred.

Q What happened after you got finished talking with Fred?

A When I got through talking to Freddie, I walked over to where he was and he asked me, "Man, why don't you let me get down, why don't you let me have some narcotics," and I told him he was dealing with Warren and he said that Warren wouldn't let him have any more narcotics because he messed up before, and he went on to explain that and he told me that everybody heard it that he was hot, and he went on to explain if he was hot, why so and so -- I can't remember the words he used -- and anyway I told him I would talke to Warren about it and see what he said, and he said, "That sucker ain't going to let me have no narcotics."

Q Who said that, "that sucker" --

A Al.

Q Taylor did?

A Yes.

Q Did there come a time, Mr. Dawson when you heard again from Harry?

A I knew her by Dorothea Lane. She had another name. I can't recall it now.

Q After these events which you described in the Town & County, did you have occasion to return to Washington?

A Yes, we did.

Q In approximately this period of time, Mr. Dawson, did you have occasion to be in the vicinity of 12th and U Street, N.W., Washington?

A Yes.

Q Can you tell us, please, how it happened that you came to go there?

A Warren and I, we were looking for Al Taylor.

Q Did you have a conversation about that?

A Yes.

Q Where did you have that conversation?

A At Warren's haberdashery.

Q What did you say and what did he say?

A We were short on the money that was owed for the previous narcotics and he said that he would let Al Taylor have the narcotics and he hadn't been paid for it.

MR. CIAMPA: May we have a date and time as to that conversation?

THE COURT: Sure.

Do you remember when this occurred?

THE WITNESS: I would think that it was the first part of April 1972, something like that.

Q 19 -- what?

A '71.

MR. CIAMPA: Your Honor, I thought the witness said '72. Can we have the first answer read back?

(Record read.)

MR. CIAMPA: I object to that as leading and suggesting that the witness change his answer, and move that it be stricken.

THE COURT: It is going to stand.

MR. WEISSFELD: May I note my objection for the record.

THE COURT: Oh, yes, Mr. Weissfeld.

(continued on next page.)

2A

Q During this period when you had this conversation about Al Taylor, where was Paul, if you know?

A Either he was in Washington or on his way.

Any time we had tried --

THE COURT: Do you know?

MR. CIAMPA: I object to that, your Honor. How does he know if he's in Washington?

THE COURT: The question is, do you know where he was? The answer appears to be that you really don't know where he was.

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q After you had the conversation with Warren, did you have occasion to go anywhere?

A Yes, we did. We drove around the city, different places where we thought Al Taylor might be, and we ended up at 12th and U Street Northwest.

Q What happened, if anything, at that point?

A We saw Al there and Warren got out of the car and talked to him.

Q Where were you?

A I was sitting in the car.

Q Where was Mr. Robinson?

A They were on the sidewalk, on the side of the car.

Q Which side of the car were you on?

A I was on the passenger side.

Q Which side of the car were you on?

A I was on the passenger side.

Q Did you hear the conversation at that time?

A Yes, I did.

Q What did they say? Do you remember?

A Warren was asking him about the money and why he hadn't paid, and he said that he had let someone else have the narcotics and they hadn't paid him, but that he was going to pay the money.

Q At the time of this meeting do you know where Paul was?

A I can't be sure whether he was in town then or not. I'm sorry. I do remember where Paul was.

Q Where was he?

A He was at the Motel on New York Avenue Northwest.

MR. CIAMPA: I object, your Honor, unless the witness tells us the basis of how he knows where Paulie is at a specific time.

THE COURT: We will get to it. Don't worry about it.

MR. ENGEL: May I ask, Mr. Ciampa to ask him when he gets his chance, your Honor?

A I am not sure what I said at that time.

Q You said this refreshed your recollection.

A Yes. I remember saying that.

Q What did that say?

A It said that I didn't know his distributor.

Q That you what?

A Didn't know his distributors.

Q In other words, you said at that time that you didn't know any of Taylor's distributors;is that correct?

A That is correct.

Q Do you recall you testified in a grand jury proceeding on May 1, 1975 and Mr. Engel here was examining you?

MR. CIAMPA: I am now showing the witness 3522.

Q Do you recall making the statements in answer to the questions put to you on Page 27 of that exhibit?

A The first one doesn't refresh me.

Did what take place?

Q I am referring to these questions and answers.

MR. ENGEL: Is there a pending question?

A It says, "When did that take place?" I don't know when that is.

MR. ENGEL: Is there a pending question with respect to this material?

Q Of course you haven't gotten any time for any other case since then, is that right, since '71?

A That is true.

Q Do you know if Al Taylor is a junkie?

A No, I don't.

Q He could be and you wouldn't know it?

A That is true.

Q How much time have you done in all your life?

A I have been sentenced to 3 to 6 and 12 years.

Q Would you explain what that means, Mr. Dawson?

A I was sentenced from 1 to 3 years, 2 to 6 years, and 4 to 12 years on separate occasions.

Q How much time have you spent in prison?

A I think I did about 19 months for the 3 years, and something over 4 years for the 6, and less than 8 for the 12.

Q So you spent in excess of 13 years in prison in your lifetime; is that right? Just adding up what you just said.

A Yes.

Q Yesterday we talked about Moochie. What is his real name?

A Cornelius Garner.

Q Is he a friend of yours?

Q Then what happened?

A Al came back to the store.

Q Was there a conversation?

A Yes, there was.

Q Who was present?

A Warren and Al Taylor talked.

Q Did you hear the conversation?

A No, I didn't.

Q After the conversation did you have a conversation?

A Yes, I did.

Q With whom?

A Warren Robinson.

Q What did you say and what did he say?

A Warren told me he wanted me to go with him.

Q Did you go anywhere?

A Yes, we did.

Q Where?

A 12th Street, N.E.

Q Was anybody else with you?

A WarrenRobinson, Al Taylor and myself.

Q What happened at 12th Street, N.E.?

A Went to Salley's apartment, went in the alley behind the apartment. Warren gave me the key, told me to go inside and get an ounce of dope.

Q What did you do?

A I walked down the alley, went into the apartment, went in the bedroom, went behind the dresser to the stash, got an ounce of dope and returned to the car.

Q When you returned to the car was anybody there?

A Warren Robinson and Al Taylor.

Q What did you do?

A I got in the car, put the dope on the floor between Al Taylor's feet.

Q Was there a conversation?

A Yes, there was.

Q Who said what to who?

A Warren asked me did I get the package.

I told him yes.

He said, give it to Al.

Q What did you say, if anything?

A I asked Al what was that between his foot. Al told me -- he said that wasn't necessary.

You know, so I told him that I never put dope in the person's hand. So we laughed about it and drove off.

Q Directing your attention to the summer of '72, did you have occasion to go to the Town & Country Motel?

A Yes, I did.

Q Where is that located?

Q After that transaction, did you have occasion to talk with Robinson about Al Taylor?

A Yes, I did.

Q On more than one occasion?

A Yes, I did.

Q Do you remember any specific occasion?

A Warren said Al was a bad payer and like he couldn't afford to give him too much narcotics.

MR. CIAMPA: Objection.

That was a nonresponsive answer. The question was "Do you remember."

THE COURT: Who said this?

THE WITNESS: Warren Robinson told me that Al Taylor was a bad payer and couldn't afford to give him too much narcotics.

THE COURT: I will permit it to stand.

Q When was that converastion, if you remember?

A September-October, 1972.

Q Did he say anything else at that time?

A I don't remember.

Q Do you know how much narcotics Robinson had sold Taylor in the past?

MR. CIAMPA: Objection.

Q Before that transaction?

MR. CIAMPA: Objection.

THE COURT: If he knows.

MR. CIAMPA: It may be outside the scope of this indictment.

That question is exceedingly broad.

Q Between 1971 and October of 1972, do you know how much narcotics Robinson sold to Taylor on any given transaction?

MR. CIAMPA: Objection.

THE COURT: If he knows.

Answer yes or no.

A Yes.

Q How much?

A Warren said he had given Al as much as an eighth of dope. He was a bad payer so he cut him down.

(Continued on next page)

THE COURT: Does that conclude the direct examination?

MR. ENGEL: One question, your Honor.

Q Do you recall, Mr.Pannirello, reciting that phone number on that conversation?

A Yes.

Q Where you could be reached?

A Yes.

Q Do you know what that phone number was?

A That was the phone number of the agent's office.

Q The Drug Enforcement Administration?

A Yes.

MR. ENGEL: No further questions.

THE COURT: Okay.

Mr. Ciampa, do you have any questions?

MR. CIAMPA: Just one.

CROSS-EXAMINATION

BY MR. CIAMPA:

Q Do you know Al Taylor?

A No.

MR. CIAMPA: No further questions.

THE COURT: I got a question for you.

(Pause)

CROSS-EXAMINATION

BY MR. CIAMPA:

Q Do you know Al Taylor?

A No,I don't.

MR. CIAMPA: No further questions.

THE COURT: Mr. Pollak.

CROSS-EXAMINATION

BY MR. POLLAK:

Q Good afternoon, Mr. Provitera.

Mr. Provitera, you have testified here that you started your career in crime in January of '73, is that right?

A Yes.

Q At that time you were working, were you not?

A Yes.

Q Supporting your family?

A Yes.

Q Making a living?

A Yes.

Q At the time that you had this conversation with Harry Pannirello -- prior to that time did you know that he was in some sort of criminal activity?

A Yes, I did.

Q But you didn't know the nature of it, right?

A Right.

came to New York with Warren Robinson, and saying that, to your recollection, no he had not come to New York with Warren Robinson? Do you remember saying that?

A Yes, I do.

Q Do you remember being asked whether Warren Robinson ever told you that Al Taylor came to New York with him and saying no? Do you remember that?

A Yes, I do.

Q Did Warren Robinson ever tell you that Al Taylor came to New York at all?

A Yes, he did.

Q What --

MR. CIAMPA: I object, your Honor. This is beyond the scope of the direct, beyond the scope of the cross, beyond the scope of the indictment, and I'm totally surprised, your Honor.

MR. SIFFERT: It is within the scope of the indictment. He opened the door, your Honor.

THE COURT: I think you have gone far enough down this line.

Q Do you recall being asked questions by Mr. Goldberger on cross-examination and asked questions -- this is on Page 1150, Lines 22 to 25 -- do you remember being asked this question and giving this answer:

it, I will let you do that, too.

(Record read)

THE COURT: Do you want to reframe it? Go ahead.

Q Did you send for your lawyer on Thursday?

MR. SIFFERT: Objection. I would like a side bar.

THE COURT: No. Let him answer it.

A My lawyer came.

Q How did he come?

A I don't know.

Q Carrier pigeon? Who sent for him?

A I don't know.

He could have --

Q He could have what?

MR. SIFFERT: Objection.

THE COURT: This is speculation.

He showed up. You didn't send for him; is that right?

THE WITNESS: Yes, sir.

Q Is that Mr. Higgins?

A Yes, it is.

Q Mr. March, do you know whether Al Taylor ever went on any of those trips to New York with Warren

Robinson?

A No, I don't.

Q Yet a moment ago in answer to Mr. Siffert's question, you said that Warren told you he had?

A Yes, he did.

Q So you do know whether Al Taylor ever went on any of those trips to New York; is that right?

A I would have to explain it to you. I couldn't answer yes or no.

Q I am asking you a simple question.

I asked you do you know just now whether Al Taylor ever went on any of those trips to New York, and you said, "No, I don't."

That means you don't know, is that it?

MR. SIFFERT: That is not a simple question; it's compound.

MR. CIAMPA: Your Honor --

THE COURT: If you are going to object, object.

MR. SIFFERT: Objection.

THE COURT: What page is this on?

MR. CIAMPA: 1096.

THE COURT: I will permit it.

Read it back to him.

(Record read)

A No, I don't know.

Q You don't know?

A No.

Q And you also testified, did you not, that Warren Robinson told you Al Taylor had gone to New York; that is what you said this morning?

A Yes, I had.

Q Did Warren Robinson tell you that between Thursday and today?

A No, he didn't.

(Continued on next page)

Q So on Thursday, presumably you knew that Warren Robinson had told you that Al Taylor had gone to New York?

A Yes, I did.

Q Yet you said, "No, I don't."

A I don't know. I know Warren told me.

Q You don't know but you know Warren told you?

A That is right.

Q When I asked you a second question on page 1096, "Was he ever along when you went to New York to pick up kilos of heroin?" you answered no, is that correct?

A Yes.

Q When I asked you was heever along on trips to New York to buy narcotics,you answered again, "No, he wasn't."

A Not with Warren and myself.

Q That is three out of three, isn't it? Three nos on Thursday, is that correct?

A Yes,it is.

Q Mr. March, you were also asked, were you not, had you spoken to anyone during the luncheon recess on Thursday. You were asked that on Thursday by Mr. Goldberger, is that correct?

MR. SIFFERT: Page and the question itself.

A When I joined the NTA Program.

Q Can you give us a date?

A Ican't.

Q A year?

A It could be.

THE COURT: You are not talking the same language. H wants to know what year.

A 1974.

Q You haven't been examined officially since then?

A No, I haven't.

Q Do you feel all right now?

A Yes, I do.

Q Do you know whether Al Taylor ever went on any of those trips to New York with Warren Robinson?

A No, I don't.

Q Was he ever along when you went to New York to pick up kilos of heroin?

A No, he wasn't.

MR.CIAMPA: I will withdraw the question.

Q Was he ever along on trips to New York to buy narcotics?

A No, he wasn't.

Q Did you ever hear WarrenRobinson say that Al Taylor had gone to New York to pick up narcotics?

A With Warren?

Q Did Warren ever tell you that?

A No, he didn't.

Q Warren told you that Al Taylor had taken an eighth at some point, is that right?

A Yes, he did.

(continued on next page.)

Q You didn't see that, did you?

A No, I didn't.

Q You have no idea when that transaction occurred? Do you?

A No, I don't.

MR. CIAMPA: Your Honor, I believe I have no further questions. Let me just check my notes.

THE COURT: Sure.

(Pause.)

MR. CIAMPA: It turns out I do have.

Q You referred to a person as Al's old leady. Do you know her name?

A No, I don't.

Q You said that you went to the Mount Pleasant Street apartment. Do you know that that was Al Taylor's apartment for a fact?

A I know that he lived there.

Q Had you been there before?

A No, I hadn't.

Q You had not. You mentioned in your direct testimony, Mr. March, "Alvin, a kid" and Alan, is that right?

A I mentioned Alan. ?

Q Did you mention "Alvin, a kid?"

of innocence. No one is innocent.

THE COURT: I have never heard such a self-incriminating statement as that. If your wife ever gets it, you are in trouble.

MR. SIFFERT: Before the reporter leaves the room, there has been much ado about Page 1018 in the transcript --

THE COURT: I didn't hear any ado about it.

MR. SIFFERT: -- concerning the dealing with Al Taylor at Mount Pleasant Street.

The record now reads, at Line 4:

"Q Directing your attention to September of '71, thereabouts, did you have occasion to see Al Taylor?

"A Yes, I did."

I asked the court reporter to bring down his notes as to what was said, and he has just advised me that the date stated was September of 1972, so that it is a typographical error, as I said yesterday.

THE REPORTER: That's correct. My notes have "1972."

THE COURT: Mr. Reporter, your notes have '72?

THE REPORTER: Yes, sir.

THE COURT: All right.

MR. SIFFERT: I would like the transcript changed

expect you to go through the minutes, but I submit to you, there is nothing, not a photograph, nothing.

Now, curiously enough, when the Government undertook to talk about other premises in this case, other apartments, they always brought up somebody from Washington. There would be a lease, a diagram. They had pictures of some places.

Bubbles March said to you that this bad credit risk who had no money not only became a customer of Warren Robinson's, but got free home delivery from the president of the company himself.

The record says it was September '71 --

MR. ENGEL: Objection. That is not what the record says.

THE COURT: The jury heard the testimony. It's their recollection that counts.

MR. CIAMPA: The minutes at Page 1018 says September '71.

MR. ENGEL: That is what I object to, your Honor.

THE COURT: Yes.

MR. ENGEL: That is not true.

THE COURT: The minutes say that. That is true.

MR. CIAMPA: If I may continue, I think I will satisfy Mr. Engel's objection.

There is some question whether in fact the witness said that or said September of 1972 and the minutes are a misprint. '71 or '72.

You heard Ms. Goldring come in. She was the realtor for the apartment where these drugs were supposed to be delivered. I called her.

The Government did not produce a lease. The Government did not produce a diagram. The Government produced nothing about that apartment.

Why? They did with other apartments.

I was the one that called Ms. Goldring. Ms. Goldring came here, looked at her records, and told you, as did Julian Hailes, that Al Taylor lived with somebody called Breda Hines, also known as Wells, and that they lived on Mount Pleasant Street at the particular address, and that that apartment in September of 1971 was in the basement. It was Apartment No. 1.

Now, in case the delivery was alleged to have been made on September 22nd, Ms. Goldring says -- at 3344 of the minutes -- I know you won't remember the page numbers. At 3344 she said, in answer to a question, and in September, September of '72, where did Breda Hines live,

The defendant as you well know was under indictment in the Bronx for murder at that time, and of course her interest would be to cover his tracks, literally.

MR. SCHMUKLER: That again is an argument addressed to weight and not admissibility and I would respectfully suggest --

THE COURT: I am sorry, Mr.Schmukler, I have ruled. That is it.

The defense rests.

MR. COHEN: If I may most respectfully. I have one stipulation that the Government counsel and I agree on with respect to Cecil Tate. That stipulation merely refers to the fact my client was indicted on May 8, 1975, and that is the stipulation we would enter into before the jury.

MR. ENGEL: There were those outstanding stipulations. There are several. One with Mr. Siegal.

MR. SIFFERT: The one with Mr. Herbert Siegal is --

THE COURT: Fine. We will take care of it. The jury will have to take a look at that map anyway.

MRS. PIEL: Then there is one with me with regard to Rufus Wesley.

MR. CIAMPA: Your Honor, I would like to

report and once again renew my application. My client informs me that Juror No. 7 saw him in manacles this morning.

MR. SCHMUKLER: My client informs me the same thing.

THE COURT: Stand up.

You are without a doubt one of the most contemptuous persons that I have in my entire life met.

Mr. Schmukler, you won't even stand now?

MR. SCHMUKLER: Yes, I will, Judge. Considering how long it would have taken me to stand and sit to make that brief statement, I didn't believe your Honor would take offense. If your Honor does take offense, I respectfully apologize.

While I am standing, I will move at this time for a mistrial on the grounds your Honor is depriving the defendant of producing evidence in his own behalf --

THE COURT: Motion denied.

MR. MATEDERO: Your Honor, I don't know how to put this. I most respectfully request a continuance for 24 hours to find Manoda Claggett. This is a person under Government subpoena that could give very valuable testimony to the defense.

THE COURT: We can go go on with continuances

forever and ever and we have to finish at some point.

You have rested whether you like it or not.

MR. MATEDERO: Respectfully except.

THE COURT: Everybody excepts to that.

MRS. PIEL: I want to except on the specific grounds of wishing not a continuance for 24 hours, but a continuance for an opportunity to speak to Mr. Curry who has been brought up from Atlanta, I understand, at my request.

THE COURT: Is he here?

MR. ENGEL: Yes.

THE COURT: Where is he?

MR. ENGEL: In the MCC.

THE COURT: Get him over here now.

MR. ENGEL: Yes, your Honor. I ordered him on Friday. I want the record to reflect that.

THE COURT: Get him over here now and tell them right now.

DEFENDANT RAMSEY: Your Honor, I don't understand fully about what you are saying that the defense rests, but I am innocent in this case and I would like an opportunity to have my witness in order for me to prove my innocence.

THE COURT: Who is your witness?

[3469]

THE COURT: I never heard of it before.

MS. PIEL: Mr. Engel knows what I am speaking about.

Is that correct?

MR. ENGEL: Your Honor, I produced on a writ Mr. Curry. He has been in the MCC for several days, since, I believe, last Thursday, and I told Ms. Piel on Friday that he would be in the witness room at 9:30, having checked with the marshals and ordered him to be here. He is not in the witness room at the present time. I don't know why he is not there, but, in any event, Mr. Curry was here all weekend and should Ms. Piel have availed herself of the facilities of the MCC --

MS. PIEL: I didn't know about it. It would have been difficult to avail myself of facilities that I don't know about.

MR. CIAMPA: I asked that Mr. Cornelius Garner be produced to be called today and I understand he has not been brought to New York.

MR. ENGEL: On Friday, your Honor, I checked with the marshals and Mr. Garner had not yet arrived. I called Mr. Ciampa that afternoon and informed him of that, and I haven't had another chance to check with the marshals this morning.

Q If the questions were put, the same questions with respect to the defendant Miller, would your answer be the same?

MR. FISHER: I object to the form of the question.

THE COURT: Sustained.

MR. MATEDERO: No further questions.

THE COURT: Anybody else?

MR. ENGEL: Yes, your Honor.

CROSS-EXAMINATION

BY MR. ENGEL:

Q Is it your intention to assert the Fifth Amendment privilege with respect to any of the matters relating to Indictment 75 Criminal 1112 as long as you are allowed to do so?

A Yes.

Q That is, until you are directed by a judge to answer questions with respect to the matters contained therein?

A Yes.

Q Mr. Robinson, are you aware of any offer on the part of the Government to you, through your attorney, as to any possible disposition by way of plea of guilty to 75 Criminal 1112?

Overt Act 1. I refer to Government's memorandum Page 22.

Overt Act states in or about --

THE COURT: I can read it.

MR. CIAMPA: The Government responds to the motion to strike by stating this first occurred the first part of April, 1972, something like that.

Tennessee was in the car at 12th and U Street Northwest, Washington, and Warren and Taylor were on the corner. For that proposition, the Government cites Transcript 1112.

I just want to point out simply that the first part of April 1972 is not March '71.

MR. ENGEL: Your Honor, briefly --

MR. CIAMPA: That the conversation alluded to is in fact Overt Act 2, not Overt Act 1, and I will also move to strike Overt Act 2 on the basis that April of '71 is not April of '72.

In short, the Government puts forth an incident that clearly is covered in the indictment by Overt Act 2 to support the missing evidence for Overt Act 1.

Therefore, I submit that Overt Act 1 should be stricken and I submit that Overt Act 2 should be stricken because of this large variance of a year.

As to Overt Act 34 --

MR. CIAMPA: If your Honor please --

THE COURT: You folks are going to be big boys and girl and figure out your own order of summation. If you don't, we will do it in reverse order, reverse order from the indictment, but if you want to change it, fine.

MR. SIEGAL: May I be heard for one second? I have to earn my fee.

THE COURT: You have earned it more than once.

MR. SIEGAL: If your Honor please, at this posture of the case,I most respectfully renew all of my motions made at the end of the Government's case, both orally and in writing, and in addition at this time ask your Honor to rule in accordance with the case of U.S. v. Taylor, a copy of which I handed to your secretary the other day.

THE COURT: Look, everybody has renewed their motions. There are two different standards, and I am well aware of it.

MR. CIAMPA: I would like to point out for the record that I called for the production of a witness who was in custody here in New York at MCC on January 29th and on February 4th, and several times thereafter. I would like to move for leave to reopen my case and for a

continuance on the basis of the fact that the Court ordered the Government to produce this particular witness, Cornelius Garner. I believe that is in the minutes.

MR. ENGEL: What page, please?

MR. CIAMPA: I don't have it right now.

In the application this morning, I said defendant Taylor being seen again in manacles by Juror 7 I don't believe was dealt with, and I have an instruction that I asked for orally and it is now incorporated into my request for a charge, and I think that the Court stated that it's waiting for the proper time frame to make an instruction, in the event that the motion for a mistrial was denied.

Of course, I move for a mistrial and, failing that,I will move that that instruction that I requested be given forthwith.

THE COURT: All right.

Motion for a mistrial is denied. I can't give it forthwith because the jury is gone, but I will consider it.

MR. ENGEL: Your Honor, two matters.

THE COURT: You, too?

MR. ENGEL: am sorry.

The Government has moved on Page 6 of its

tainly not in any way connected with the conspiracy, but the jury I don't think will be able to differentiate and they would charge all the defendants with possession of those drugs, consider it a part of the conspiracy.

MS. PIEL: Your Honor --

MR. SCHMUKLER: I just want to add this:

My application is also to sever that count, your Honor.

MS. PIEL: Your Honor, I want to join in the motion as well on behalf of the defendant Rufus Wesley.

I want to add that there is a similar situation with regard to the only other narcotics that have been introduced in evidence in the case, involving the defendant Smith, where I believe the evidence is not at all that the source of the narcotics in the Smith transaction was the so-called source and, therefore, I want to tie the two issues together, because I believe they are both prejudicial to the rest of the defendants.

MR. CIAMPA: Your Honor, may I be heard very briefly?

THE COURT: Sure.

MR. CIAMPA: I wish to underscore Mr. Pollak's comment. I believe this is a misjoinder, particularly as to the defendant Taylor who is not charged with any

substantive count.

I would remake my motion for a severance, object to the introduction of this evidence. If it must be introduced, I would remake my motion for a severance.

Once again, I don't think it can be covered by a limiting instruction. The dope, especially if it is extra-conspiratorial, whether it is or it isn't, is highly inflammatory to those defendants. I speak particularly for Taylor and those who are not charged with any substantive count.

THE COURT: I assume everybody joined in this.

MR. SIEGAL: Yes.

MR. SCHMUKLER: May I beg your indulgence to add one further comment before the Government responds?

I know your Honor was confronted with a similar issue in the original Tramunti trial regarding a defendant in that case, Hank Springer.

I wish to remind the Court -- I know the facts of that prosecution and that case are still fresh in your Honor's mind. Your Honor has displayed a complete command of the record throughout this trial, complete command of the original trial record in that case.

Your Honor may recall that Springer, after failing to appear on several pretrial conferences, was

(At 5:20 P.M. a note was received from the jury.)

(In open court; jury absent.)

THE COURT: I received a note which will be marked Court Exhibit 6.

"Please submit to us the indictment and voting sheets."

They are on their way in.

xxx (Note marked Court Exhibit 6.)

(Recess.)

(At 6:10 P.M. a note was received from the jury.)

(In open court; jury absent.)

THE COURT: I received a note from the jury which will be marked as Court Exhibit 7.

xxx (Court Exhibit 7 marked.)

THE COURT: "Please let us have testimony of Dawson, Mrs. Goldring and March regarding Al Taylor."

We will read it back.

MR.GOLDBERGER: Your Honor, with regard to the jury's request, I assume since Mr.Taylor is the first named defendant in the indictment -- they are probably proceeding down in order -- if they go on that way we are going to have the entire record read back to

Hypothetically speaking, suppose Mr. Robinson were indeed guilty of one or more of the substantive counts and suppose furthermore, that he is indeed innocent of the 848, he is in one hell of a position in defending if it is in fact his intention, and it is, to testify in behalf of himself and in defense of the live count.

The live count, the gravimen of that charge, is whether or not Robinson was somehow a supervisor or manager of five more people. It wasn't until recently that I was able to take the list of people the government is relying upon as those he supervised from the bill of particulars and conferred with Mr. Robinson. One of the reasons was, as your Honor knows Mr. Robinson was in Virginia facing disposing of charges there. I went through it with him carefully yesterday, after leaving here, and I represent to the Court that I believe Mr. Robinson will testify on the 848 and will claim that he was involved in narcotics, even involved with some of those people, but by no stretch of the imagination was he their boss.

He was involved in dealing in narcotics as independent contractors, one with the other, that the financial arrangements between these people were percentage deals. In other words, Robinson might give narcotics to one of these people and upon the sale they

a very nice experience with them.

I would ask the Court to inquire of the general matter about the credibility of witnesses, would the fact that a witness was a police officer or if at all narcotics agent, would that in and of itself lend greater credence to the testimony of such an individual to that juror.

Finally, your Honor, and perhaps most significantly, as I indicated in the robing room to the Court, and now I will indicate to all counsel in this case, it is my intention to disclose to the jury inopening that I will prove that Mr. Robinson, Mr. Client, is, in fact, a conspirat in the conspiracy charge and is convicted for that and is, in fact, in jail for that.

Our defense will be, your Honor, no matter what he did vis-a-vis these witnesses, he did not commit the crimes charged in this indictment.

In view of the defense that I have decided upon, your Honor, and I confirm and resolute in this opinion -- I have discussed it with my client as recently as moments ago -- I would ask the Court, and this is a very, very difficult situation, to inquire of this panel whether or not the fact that a defendant admits that he has violated the narcotics laws, will that in and of itself so prejudice him or her, the defendant making that admission, that a fair

your Honor, if that will expedite matters.

MR. CIAMPA: As to my client, your Honor, with respect to my motion for a severance, which I here apply to the Court, my client is only charged with conspiracy and is really not a party to some of the other counts. I would add that ground to the ground already stated by other counsel.

MRS. PIEL: Your Honor, I am not standing up to join in, although I am not separating myself out. I, of course, join in the motion to sever on the basis of prejudice. However, I want to get back to the voir dire.

I am not at all satisfied that, first of all, we know the present and past occupations of each juror. Your Honor asked thequestion generally. As it turned out, juror number 3 developed another occupation which he had a disability. I am not at all satisfied we know either their occupations or their educational background which I did request.

Secondly, your Honor, I don't believe we know anything about their children. They all appear to be rather elderly. It would seem that a number of them might have children and they might have children involved in all kinds of things that we are interested in.

I did make a written request for that.

Thirdly, your Honor, the question was asked by

THE COURT: You agree with that?

DEFENDANT ROBINSON: Yes, sir.

THE COURT: I don't need an affidavit.

MR. FISHER: Thank you, your Honor. I have met with my colleagues. I have told them what I intend to do.

The opening statement will include not only my admission that Mr. Robinson has dealt in narcotics with each of the five co-conspirator witnesses, that we expect to testify for the government, but, as a matter of fact, with many, if not most, of the defendants here on trial.

Our position is, nevertheless, that the government will be unable to meet its burden with regard to the specific offenses alleged against Robinson in the five substantive counts.

I have spent this weekend or part of it, and my associates have been researching what little law there is with regard to this unique situation.

Your Honor, we are not talking about mere inconsistent defenses, we are not talking about a situation where Robinson gets on and testifies and inculpates one or more co-defendants and then the lawyers are allowed to cross-examine.

There are cases that hold that denial of the

Not against the lawyers but it seems to me from my vibs, at least, that the defendants may wish to play games. The first time I see any of it, and you can check with your counsel whether I will do it or not, the first time I see any of it I will revoke bail for all of you and you will all sit in the same cell block and think about it.

DEFENDANT RAMEY: Your Honor, can you verify what you mean by playing games?

THE COURT: You and your attorney are supposed to fight hard, but fight fair. What I am talking about in playing games, I understand that somebody may be considering one of these outbursts, screaming, tantrums in the courtroom with the collusion of his co-defendants and I am telling you right now, that is not going to happen.

Do you have something else to say?

DEFENDANT RAMSEY: Your Honor, may I have a moment to talk to my lawyer?

THE COURT: Yes.

MR. FISHER: May Mr. Engel and I approach you? It doesn't need to be on the record.

THE COURT: Yes.

(Discussion held off the record at the side bar.)

MR. CIAMPA: Your Honor, while the jury is out, may I approach with a totally different application? It has

to do with some witnesses that may be necessary. I want a representation from the government they will be available.

THE COURT: Do you want to tell me privately?

MR. CIAMPA: No. It may be necessary for me to call one Cornelius Garner also known as Moochie. I understand he is in the government's custody today at MCC.

THE COURT: Don't worry about it. If you want to call him MCC, I will make sure he is here.

MR. CIAMPA: I don't think that is his permanent address. He was brought in from somewhere else and I wanted to make sure he is available for trial.

MR. ENGEL: He was brought in on a writ and the writ has been satisfied. I don't know whether he is still there or what the situation is.

In any event --

THE COURT: I bet you money we can get him in here again.

MR.ENGEL: When it comes time, we can get another writ up and get him back but we have to take the position we cannot keep everybody over at MCC.

THE COURT: Of course.

MR. LEVNER: One last very brief point. Also James Kelly..

MR. ENGEL: The same situation obtains with

FEDERAL PENITENTIARY
LORTON, VIRGINIA

15 Cr. 111

and the United States Marshal for the Southern District of New York

GREETING:

YOU ARE HEREBY COMMANDED to have the body of 160 457 CORNELIUS ANTON GARNER, ~~#87444-132~~ detained in the Federal Penitentiary, Lorton, Virginia

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
MAR 3 4 PM '76

under your custody, as it is said, under safe and secure conduct before the Judges of our District Court within and for the Southern District of New York, at the United States Court House, Foley Square, on March 19, 1976 at ten o'clock in the fore noon, there to testify the truth, according to his knowledge, in a certain cause now pending in said Court, and then and there to be tried in the matter of United States of America versus Al Taylor et al before the said Court, and immediately after the said Cornelius Anton Garner, #87444-132 shall have given his testimony in the above-entitled matter, that you return him to the said Federal Penitentiary, Lorton, Virginia under safe and secure conduct, and have you then and there this writ.

WITNESS the Honorable DAVID N. EDELSTEIN Chief Judge of the United States District Court for the Southern District of New York, at the United States Court

House, Foley Square, New York, N.Y., this 12th day of March, 1976

Raymond F. Burghardt

Clerk of the United States District Court
for the Southern District of New York

The foregoing writ is hereby allowed.

United States District Judge

48-76(Sdny)

GPO 1971 O - 447-832

Warrant of Removal on Indictment — Cr. Form No. 14 (Rev. 10-51)

RECEIVED
FEB 3 1976
JAMES F. DAVEY, Clerk

United States District Court

FOR THE

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. ALFRED T. TAYLOR	U.S. Mag. No. D.C. 76-64 M (CR) No. New York No. 75 CR 1112

To the U.S. Marshal for the District of Columbia or any of his authorized Deputies

The grand jury of the United States for the Southern District of New York having indicted ALFRED T. TAYLOR on a charge of

Title 21 U.S.C. 841(a), 812, 173, 174

ALFRED T. TAYLOR having been arrested in this District and, after waiving[1] hearing, having been committed by a United States Magistrate to your custody pending his removal to that district,

You are hereby commanded to remove ALFRED T. TAYLOR forthwith to the Southern District of New York and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

U. S. MAGISTRATE

Dated at Washington, D.C. this 22nd day of January 1976.

[1] Strike "waiving" if hearing was had.

RETURN

District of DIST ss D.C.

Received the within warrant of removal the 23RD day of JANUARY 1976 and executed same. 24th Jan 76.

U. S. Marshal.

By [signature] Deputy Marshal.

REFERENCES SUPPORTING BRIEF OF

CHARLES RAMSEY

BY THE COURT:

Q Mr. Tomassetti, would you have problems sitting on a case of this length?

A No, sir.

Q Yes.

A (PJ 3) What is the length of this case, sir?

Q I put an outside limit of seven weeks on it.

A May I mention something to you, Judge?

Q Yes.

A I have a medical appointment six weeks from last Monday at 2:30 in the afternoon.

Q We will take care of it. Don't worry about it. That's easy.

Mr. Tomassetti, I see you come from Mamaroneck.

A (PJ 6) Right.

Q Did you live there for five years or more, sir?

A Yes, sir.

Q Are you presently employed?

A Board of Education, custodian, 17 years.

Q Are you married?

A Yes, sir.

Q Is your wife employed?

A She's a switchboard operator for the Sarah Newman Nursing Home.

UNITED STATES OF AMERICA

v. 75 Cr. 1112

AL TAYLOR, et al.

April 1, 1976
9:30 a.m.

(Trial resumed)

(At 9:30 a.m., the jury resumed deliberations.)

(At 10:05 a.m., three notes were received from the jury.)

xxx (Court's Exhibits Nos. 23, 24 and 25 were marked.)

(In open court; jury not present)

THE COURT: Bring in the jury.

MS. PIEL: Before the jury is brought in, I do have an application.

MR. POLLAK: I do also, your Honor.

THE COURT: I will take it after the jury hears the testimony.

MR. POLLAK: My application is in connection with the testimony to be read to the jury.

MS. PIEL: I am renewing the application that I made last night at 11:00 o'clock to be heard.

THE COURT: I don't know what your application

was last night.

MS. PIEL: It was to be heard.

THE COURT: Go ahead. Let me hear it.

MS. PIEL: Your Honor, I am concerned on behalf of my client with regard to Juror No. 3.

On several occasions I noticed that Juror No. 3 had problems, and your Honor spoke to Juror No. 3, and just before Juror No. 3 left, as I recall, for the last time, he came to your Honor and said something, and I would like now to know --

THE COURT: No, absolutely not.

MS. PIEL: I would like to know what Juror No. 3's problem was.

THE COURT: You will not hear it.

There are certain things, Ms. Piel, which are totally personal that a juror feels constrained to tell a judge about, and this was totally personal, and I am not going into it on the record or anyplace else.

MS. PIEL: Just so it's clear, I noted on behalf of Mr. Wesley that the juror had several conversations with your Honor.

THE COURT: Two.

MS. PIEL: That the marshal took the juror away to make a telephone call while the juror was delib-

ating, and that the juror came back and seemed to be disturbed --

THE COURT: Come on. No more of this cockamamie nonsense.

The last time was Juror No. 6; nobody liked the way she looked.

Then there was some comment outside the record why I made a comment about the landlord-tenant problem of another juror and now this.

The man is willing to serve. He is serving well. That is all you need to know. His personal problems are none of your business; in fact, almost none of mine.

I feel at this point almost under a seal of confession, and I am not going to disclose it to you or anybody else, and that is it, the end.

MR. ENGEL: Your Honor, may I just inquire:

I take it Mr. Allen's personal problem has nothing whatsoever to do with the deliberations --

THE COURT: I already said that.

MR. ENGEL: -- and with any time problem.

THE COURT: I already said that.

MR. ENGEL: That is all I wanted to hear.

MR. SCHMUKLER: I am not sure that has been said. We were concerned because the juror approached the bench

to speak to your Honor two or three times --

THE COURT: Wait a second. I already said that. It's finished, it's over, it's done with.

MR. POLLAK: I have an application on a totally unrelated matter. It relates to the testimony.

From the notes here, one of the notes requests the entire examination of the witness Provitera.

THE COURT: Yes.

MR. POLLAK: As your Honor recalls, yesterday the jury had asked for and they heard the portion of the Provitera testimony, direct and cross, as related to Mr. Salley.

I submit for them to hear it again at this point would be both unnecessary and also unduly highlighted.

I would respectfully urge that the Court make an inquiry as to whether they want to hear everything of Provitera again, or only the portion they did not hear last evening.

THE COURT: No. They asked for everything; they will get everything.

Get the jury in -- give me those notes.

MR. ENGEL: I would like to note for the record that Mr. Allen, when leaving the jury room on two occasions,

I remember, perhaps three, left the box and went up to your Honor and spent perhaps fifteen, thirty seconds talking to your Honor, and left, and your Honor's statements today indicate whatever Mr. Allen said, they had nothing to do with any time impingement or any problem as to the length of the deliberations.

THE COURT: I said it once. You don't have to repeat it.

God have mercy.

MR. POLLAK: One further thing on Provitera. In fact, it's a suggestion that didn't come originally from me, but I happily adopted. Since it is rather lengthy, perhaps the Court might advise the jury if they have heard enought at a particular point, they shall so indicate by raising their hands.

THE COURT: No. We will get to a point where we will take a break. If they want to write me a note and say they have heard enough, fine.

MR. GOLDBERGER: May I just inquire which testimony is going to be read first?

THE COURT: They all came out together.

I guess the easiest one to read first is Provitera. They want all of it.

MR. LEVNER: Good morning, your Honor.

May I put a collateral question to the Government?

Ms. Piel made an application. Mr. Engel made certain statements. Do I take it that Mr. Engel or the Government is joining in Ms. Piel's application?

MR. ENGEL: Your Honor, the Government would think the better practice would be to put it on the record, seal it, and what your Honor could do for purposes of here in court, take the court reporter in the robing room and seal it.

I think that is the procedure.

THE COURT: That I will do.

MR. LEVNER: Thank you very much.

(Jury present)

THE COURT: Ladies and gentlemen, I received three notes from you today. I don't know which one goes first, so I will have to pick that myself.

"Please let us hear all of the testimony of Provitera."

That is Court's Exhibit 25.

Would you read it, please.

(Record read)

THE COURT: This is the end of the direct examination.

We will break for a few minutes.

(The jury leaves the courtroom)

(At this point, record was ordered sealed by the Court.)

ORDER SEALED BY THE COURT

it to you now.

You may find one or more of the accused guilty or not guilty as charged, and at any time during your deliberations you may return into court your verdict of guilty or not guilty as to any defendant concerning whom you have unanimously agreed.

If you reach a verdict as to one or more of the defendants, but not as to the others, as to one or more counts of the indictment, but not as to the others, you may return a verdict as to those defendants or as to those counts.

All right, Marshal.

(At 12:40 p.m., the jury returned to the jury room to continue their deliberations.)

THE COURT: I said to Mrs. Moses: Candle lighting tonight is at 6:04. I checked with my orthodox rabbi friend. He is. I think his claim to fame is that he graduated with Meier Kahane.

However, I also said that, if necessary, I would try and get her a car to get her up to her home before that time.

I assume you all want to take an exception to the extra charge?

MR. LEVNER: Yes.

Q Memphis, Tennessee?

A Yes.

Q How long have you lived there?

A Since '62 -- '72.

Q Since 1972?

A Yes.

Q Where did you live before that?

A Washington, D.C.

Q Is that in the city of Washington?

A When I left there, I lived in Landover, Maryland, a suburb of Washington.

Q I will ask you, Mr. Dawson, if I may, to speak as loudly and distinctly as possible so everybody in the jury box and the courtroom can hear you and understand you.

How long have you lived in Washington?

A 32 years.

Q Or its environs?

A Yes.

Q Mr. Dawson, have you ever been convicted of a crime?

A Yes, sir.

Q When were you first convicted?

A 1950.

Q Were you convicted thereafter?

A '54.

Q And again?

A '59.

Q What were you convicted for in each instance?

A Housebreaking.

Q What is the crime of housebreaking?

A It was safecracking.

Q In each instance of your conviction, Mr. Dawson, what kind of safe did you crack open?

A In stores businesses.

Q Did there come a time Mr. Dawson, when you met a person by the name of Warren Robinson?

A Yes, sir.

Q When did that happen?

A The latter part of '69 or '70. I am not sure.

Q Where did you meet him?

A He had a store in Washington, D.C., on Georgia Avenue.

Q What was the name of the store?

A Warren's Haberdashery.

Q Did it ever have another name?

A The Spa Shop later on.

Q The same store?

A Yes.

THE COURT: Read the question back.

(Record read)

A At the time of my sentence, yes.

Q Aren't those terms? You do something for them; they do something for you. Aren't those terms?

A I guess that could be said that that would be terms, yes.

Q They gave you money; is that correct?

A Expense money.

Q And reward money; is that correct?

A Not -- yes, the narcotics squad, yes.

Q When did you arrive at these terms? When did you hear about these terms?

A When I was arrested.

Q What date was that?

A I'm not sure when I was arrested. I think it was September of '73. I'm not sure.

Q That's the first time that you entered into this agreement to cooperate with the Government; is that right?

A No, that wasn't the first time that I agreed to cooperate with the Government.

Q That's what I'm asking you.

When did you agree to cooperate with the

Government?

A I can't remember. Sometime in '72 or the latter part of '71; November, December, somewhere in there.

Q Did you receive money from the Government in '71?

A Expense money.

Q In '72?

A Yes.

Q What did you receive?

A Expense money and a reward, I think. I think that's when it was, or '73. I'm not sure.

Q Did there come a time when the Government communicated to you what it expected in return from you in terms of your cooperation?

A What they expected from me?

Q Yes.

A Yes. They expected me to tell the truth.

Q More than that, Mr. Dawson, did they outline what specifically they expected, to tell the truth about what?

A No. I told them what I could do.

Q In other words, whatever it is you could do, those terms would have been available to you, the Government would help you with your sentence, and the

ess.

Q Anyway, you cracked a lot of safes in 1970, but didn't crack any safes in 1971?

A Yes, Ma'm, I did.

Q So all the time you were in the narcotics business, you were also in the safecracking business?

A In the beginning because I wasn't making any money at the narcotics.

Q How many safes did you crack in 1971?

A I don't have any idea, Ma'm.

Q YOu don't remember?

A No, Ma'm, like I say, I cracked as many as I could.

Q You can't tell me the times, the months?

A No, Ma'm.

Q The dates?

A No, Ma'm.

Q The people you were with?

A I could tell you some of the people I was with, s, Ma'm.

Q But you can't tell me when you did it?

A No.

Q And you can't tell me what safes they were?

A No, Ma'm.

A By getting them out of Washington.

Q By moving out of Washington?

A Yes, ma'am.

Q But you were cooperating with the Government after November 1971; isn't that true?

A Yes, ma'am, to an extent.

Q And you were relying on the Government's promise not to prosecute you for anything you told them; isn't that right?

A I knew if they caught me doing something, naturally.

Q I am asking you to answer my question.

Were you relying on their promise or not?

Did you believe the Government agent when he said, "We won't prosecute you for anything you tell us about"? Did you believe him? Yes or no.

A Definitely, yes.

Q Tell me, how many narcotic transactions you had after you decided to cooperate with the Government.

A Three.

Q Did you make a trip to New York in early 1972 with Warren and get narcotics?

A Yes, ma'am.

Q Did you make a trip on February 13th and see

MS. PIEL: The answers aren't always responsive.

THE COURT: You asked him what a setup is.

MS. PIEL: Should I move to strike as nresponsive --

MR. ENGEL: He should just continue.

THE COURT: Answer the question.

Q What is a setup?

A Getting someone knocked off, arrested or something.

Q Is that what "knocked off" means?

A That is a phrase that we used, yes, ma'am.

Q Were you paid a per diem? Were you paid money for getting Harry Pannirello arrested?

A I was later given a reward. I didn't ask for any. No one told me I would get one.

Q Before the reward, were you paid a per diem when you went up to New Jersey to have this negotiation of setting Harry up?

MR. ENGEL: I don't think the witness understood "per diem."

THE COURT: That means a set amount of dollars per day for your work. Did you get that?

THE WITNESS: Yes, sir. It's a certain amount

of food and hotel expenses.

THE COURT: Hotel expenses?

THE WITNESS: Yes, sir.

Q Let me show you, Mr. Dawson --

THE WITNESS: I think it's $36.

Q Let me show you a piece of paper entitled "Voucher for purchase of information and purchase of evidence."

MR. ENGEL: That is part of 3517, for the record.

Q Let me ask you if that is your signature on that piece of paper.

A Yes, ma'am, it is.

(Continued on next page)

Q All right.

Referring to this time when maybe you were sick --

MS. PIEL: I withdraw that.

Q Did you have a conversation this morning about your cross-examination with Mr. Engel?

A I asked him a question about it, yes.

Q Did you tell him that you remembered something about some entry in that bankbook that you couldn't remember yesterday?

A Yes, ma'am.

Q And did you in that connection --- did you say to him that you got some kind of a $2,000 reward from the Government different from all the other money we are talking about?

A Yes, ma'am, I did.

Q What kind of a reward was that?

A For information that I gave.

Q When did you start giving this information? When was that information given?

A I can't remember when.

Q Let's look at that bankbook again.

I now show you Exhibit 5. Tell me, if you can, look at that and tell me if that refreshes your recollection

[2994]

Q , Is it your testimony, or do you know, that the persons in this robbery where you gave the information, they were arrested in January of 1970? Does that refresh your recollection?

A No, ma'am.

Q Well, if I show you a rather poor report entitled "Recommendation for reward payment," can you look at that and can you tell me does that refresh your recollection as to the fact, if it is a fact, that you gave that information to the federal government either sometime in January of 1970 or the latter part of 1969?

MR. ENGEL: Your Honor, may we have that marked Government's Exhibit 3583 for identification?

THE COURT: Sure. It's deemed marked right now.

(Government's Exhibit No. 3583 marked for identification.)

THE COURT: Go ahead. Take a look.

A According to this date on here, I would have to say so, yes.

Q So that you were an agent or working with the federal government back in 1969; isn't that correct?

MR. ENGEL: Objection, your Honor; just form.

THE COURT: I will let it go.

What is the answer?

A I would think so, yes.

Q Incidentally, did you make application for the $2,000 reward?

A No, ma'am.

Q Did you receive, sometime in December of 1970, a letter which is part of this file, which is 3583 --

MS. PIEL: Is it, your Honor?

THE COURT: Yes.

Q I show you the copy of a letter.

Did you receive that letter or a copy of that letter in 19- -- in December of 1970?

A No, I didn't receive this copy, nothing like this, no.

Q You didn't receive a letter --

A I did receive a letter, but not this one.

Q So that letter was not -- was not written to you?

A No, ma'am.

Q And it doesn't refresh your memory in any way that you were sent the $2,000 along with a letter on December 4th of 1970?

MR. ENGEL: I'll object; just form, your Honor. It's really tough to follow.

MR. SIEGAL: Your Honor, was it July or August?

THE COURT: July or August 1971.

MRS. PIEL: A point of information. I understood, and maybe I am wrong that there was some conversation that took place at the time a lease was worked out and I thought this conversation took place the same day.

Is the witness saying it took place at a different time?

THE COURT: I don't know, we will find out on cross.

Was it different or was it the time that the lease was made?

THE WITNESS: This conversation that we are talking about now took place?

THE COURT: Yes.

THE WITNESS: At the time of the lease he wouldn't have had the apartment. I can't give you a specified date when it was. I can only give you an approximate date. I am not sure when the lease was signed.

Q Mr.Dawson, during the summer of 1971, did you have occasion to see a man by the name of Charles Ramsey?

A Yes.

Q Where did you see him?

A At Warren's haberdashery.

Q Do you see him in court?

A Yes.

Q Would you point him out, please, and tell us where he is sitting and what he is wearing?

A He is the gentleman sitting there with the glasses on. It looks like a mixed brown suit.

MR. ENGEL: May the record reflect the witness identified the defendant Ramsey.

Q Did you have occasion to have a conversation with him, Mr. Dawson, during the summer of 1971?

A Yes.

Q Where did that conversation take place?

A At Warren's store. On the street on the side of his store, right in front of his store.

MR. LEVNER: Can we have the date and time?

THE COURT: Hopefully.

Q Do you know when this occurred during the summer of 1971?

A I would think that it took place in July, early August.

Q What was the name of the street you just referred to, if you know?

A I don't know the name of the street.

Q Was it on the street that you had the conversation?

A We were sitting in his car.

Q Whose car?

A Ramsey's car.

Q Was anyone else there?

A No one else.

Q What kind of car was it?

A 1971 Mark IV.

Q Do you know what brand of car that is?

A Lincoln Continental.

Q Can you remember whatyou said and what he said during this conversation?

A We were sitting there waiting for Warren. We had been there for four or five hours and it was getting real late at night,and I was sittingin the car and he began to tell me about the narcotics that he had been getting from Warren.

Q What did he say about it?

A He said they weren't what they were supposed to be. He couldn't put but a three or four on some of them, and he was supposed to be getting a 7 to 9, and that he was putting up the front money and he should have gotten a better quality of narcotics and that if I introduced him to the connection, that he would put up all the front money.

Q Did you tell him anything about the quality of narcotics you were supplying?

MR. LEVNER: Obection, your Honor, leading at this time.

THE COURT: Yes.

MR. ENGEL: Withdrawn.

Q Did you say anything to Mr. Ramsey at that time?

A Yes, I told him that the narcotics should have been 7 to 9.

Q What time of day or night did this conversation occur?

A I guess we started talking about 9:00 or 10:00 o'clock. It was maybe 2:00 before we ever left there.

Q The conversation continued throughout this period?

A Yes.

Q You stayed in the car the whole period?

A Yes.

Q Who were your customers with narcotics during that period, Mr.Dawson?

A I sold narcotics to Moochie, Ronald and Donald.

Q Who were they?

A They were two twin brothers in Washington.

Q Where did they live, do you know?

A Donald lived in the apartment where Folks lived

in Landover. Ronald lived in the 900 block of O Street. All of them were living in the 900 block of O Street for a long time.

Q Who was Moochie, do you know his real name?

A Cornelius Garner.

Q Who were Warren's principal customers at that time?

A Ramsey --

MR. LEVNER: Objection. This is a conclusion on the part of the witness, your Honor.

THE COURT: If he knows.

How do you know?

THE WITNESS: I have seen him give Ramsey narcotics.

MR. LEVNER: In the summer of 1971 or before?

THE WITNESS: No, after.

THE COURT: When was it then?

MR. LEVNER: After?

THE WITNESS: After.

THE COURT: When was it?

THE WITNESS: That I saw him giving him narcotics?

THE COURT: Yes.

THE WITNESS: In 1972.

THE COURT: Okay.

MR. LEVNER: I move to --

THE COURT: We are talking now about a period overlapping '71 and '72, is that correct?

THE WITNESS: No, sir. I just answered the question because I had seen him give it to him, not at that time, no.

MR. LEVNER: Your Honor, I move to strike at this time all the testimony --

MR. ENGEL: Your Honor --

MR. LEVNER: -- as non-responsive.

THE COURT: No, I will permit it to stand.

Go ahead.

Q Do you know any of the other customers Mr. Robinson had at that time?

A Sweeney, James March.

Q Did he have a nickname?

A Bubbles, Tommie Farmer.

Where did he work, do you know?

A He owned a clothing store in Southeast Washington.

Q What was the name of it?

A I know the name, but I can't think of the name now.

Q Anybody else?

A Contee

Warren about Folks?

A Yes, sir.

Q Where did that conversation take place?

A I am not sure where the conversation took place. I knew on two or three occasions it was in Warren's car or Warren's store.

Q What did you say, what did he say about Folks at this time?

A For some reason they didn't particularly care for each other as far as the narcotics are concerned.

Q This is what Warren related to you?

A Yes.

Q Just relate the conversation, please, Mr. Dawson.

A Warren told me that Folks was using narcotics again and he was a bad risk, that I shouldn't trust him with the narcotics like I was.

Q Had you had a conversation with Chav on the same subject at any time?

A Yes, I asked her about it.

Q What did she say?

A That he was beginning to use narcotics again.

Q Did there come a time, Mr. Dawson, in the fall of 1971 when you had occasion to see the defendant Ramsey?

A Yes, sir.

Q Where did you see him, do you recall?

A I saw him in Warren's apartment in Silver Spring.

Q Where, if anywhere, had you been, Mr. Dawson, just prior to seeing Mr. Ramsey?

A We were returning from New York after picking up narcotics here.

Q Who is "we"?

A Warren, Bubbles and myself.

Q What time was it when you arrived in Silver Spring?

A It was in the early morning hours.

Q What happened when you got back to the vicinity of Pinky's apartment?

A I was driving and all of a sudden Warren ducked down and said, "Keep going, don't stop by the apartment because there is Ramsey."

I drove around the block and came in the back way and drove up on the ramp to Warren's apartment.

Q What happened next?

A We went into the apartment and put the narcotics on the table and began cutting it, and we had cut half a kilo of it, and a knock came on the door, and Warren looked through the peephole in the door and said it was Ramsey, and he told Bubbles and I to go in the bedroom, because he didn't want Ramsey to see us.

Q Did you go anywhere after that?

A We went into the bedroom.

Q Whose bedroom?

A Pinky's bedroom.

Q Was anyone else present there?

A Yes, she was in there asleep.

Q What happened next?

A Warren let Ramsey in and they started arguing about the narcotics because Ramsey owed 9,000 more dollars and he didn't have that so Warren wanted to give him a kilo and he wanted a kilo and a half, and it ended up that he gave him a kilo and they discussed it a little while longer, and Ramsey finally left.

Q Did you see him leave?

A Yes, I did.

Q Was he carrying anything at that time?

A Yes, he was carrying a brown paper bag that we used to put --

THE COURT: He was carrying a brown paper bag, period.

THE WITNESS: Yes, sir.

Q Did you have a conversation with Robinson after Ramsey left?

A Yes, sir.

MR. LEVNER: May we have the date of this transaction, please?

THE COURT: Sure, if we can.

When did this happen?

THE WITNESS: I would say late October, the first of November, 1971; somewhere in that area.

MR. LEVNER: I will move to strike all this testimony in response to questions by the Government on Page 192 of Thursday's testimony.

Going to Line --

THE COURT: I will read it.

MR. LEVNER: Lines 22 to 25.

THE COURT: I will permit it.

This is a perfect time to take the morning break.

If you folks think we don't do anything before you arrive, that is not true.

Mr. Clerk, would you be good enough to escort the jury out.

(The jury leaves the courtroom.)

(Recess)

(In open court; jury not present)

THE COURT: Bring back the jury.

(Jury present)

THE COURT: Bring back the witness.

THOMAS FRANK DAWSON,

resumed.

DIRECT EXAMINATION CONTINUED

BY MR. ENGEL:

Q Mr. Dawson, you testified to observing defendant Ramsey leave the apartment in Silver Spring; do you recall that?

A Yes.

Q After that, did you have a conversation with defendant Robinson?

A Yes.

Q What did you say and what did he say? Do you recall?

A He told me that Ramsey wanted a kilo and a half but he was going to give it to him later because we had another half-kilo under the table that we didn't cut up, and that was the reason he didn't give him a kilo and a half.

Q Directing your attention to the late fall, early winter of 1971, Mr.Dawson, did there come a time during that period when narcotics were unavailable?

A Yes.

Q Did you have a term you use to describe that period; a word, in other words?

(In open court.)

MR. SIEGEL: Your Honor, I have no further questions of this witness.

THE COURT: Mr. Levner.

MR. LEVNER: Yes.

CROSS-EXAMINATION

BY MR. LEVNER:

Q Good afternoon, Mr. Dawson.

A Good evening, sir.

Q Did we ever meet before, sir?

A Sir?

Q Did we ever meet before?

A I don't think so.

Q How is that?

A Sir?

Q I seem to remember you.

A I don't remember you.

Q If I told you January 19, 1976, might that help you?

A Yes, that would help me.

Q Does that refresh your recollection?

A To what date was that?

Q January 19, 1976.

A No.

Q At 2:30 in the afternoon.

A No, sir.

Q In the United States Attorney's office.

A No, sir.

Q Where Mr. Engel introcued me to you, Mr. Dawson.

A That doesn't refresh my memory.

Q Three short weeks ago.

A Yes, sir.

Q Yet you remember sitting in an automobile in Washington, D.C.?

A Yes, sir.

Q In the summer of 1971?

A Yes, sir.

Q For five hours?

A Yes, sir.

Q With a gentleman by the name of whom?

A Ramsey.

Q Charles Ramsey?

A Yes, sir.

Q My client?

A That's true.

Q Thank you. You pleaded guilty to an indictment in January of 1974, some 25 months ago, is that correct?

A I pleaded guilty to an indictment. I don't know

when.

Q That wasn't this indictment?

A No, sir.

Q Mr. Ramsey's name didn't appear as a conspirator in that case, did it?

A No, sir.

Q His name did not appear as a defendant in that case, did it?

A No, sir.

Q You gave testimony during that time, did you not?

A Yes, sir.

Q And that testimony encompassed some 300 pages, is that correct?

A Yes, sir.

Q And this is the testimony . Did you ever mention Mr. Ramsey's name?

A I can't remember whether I did or not.

Q Why don't you just find it.

MR. ENGEL: Your Honor, I don't think we have to have that kind of -- we don't even know what he is throwing at the witness. He hasn't identified it.

THE COURT: Mark it for identification.

xxx (Defendant Ramsey Exhibit A was marked for identification.)

MR. ENGEL: For the record, your Honor, Government Exhibit 3525.

MR. LEVNER: Would the Government care to stipulate that Mr. Ramsey's name does not appear in there?

MR. ENGEL: The Government doesn't care to stipulate with Mr. Levner in front of the jury as to anything.

MR. LEVNER: All right.

Q Mr.Dawson, I got time. Find Ramsey's name, please.

THE COURT: Let me make it fast.

Mr.Dawson, at that time did anyone ask you anything about Mr. Ramsey?

THE WITNESS: Not that I can remember, your Honor.

THE COURT: All right, go ahead, Mr. Levner.

Q Would it refresh your recollection if you went thr>gh that?

A I can't see how it could possibly be in there if I wasn't asked about Ramsey.

Q Do you know for a fact whether or not you were asked about Ramsey?

A No, sir, I do not.

Q You definitely were not a'ked about Ramsey?

A No, sir, I do not say that.

Q What did you say, sir?

A I don't know.

d 2A

Q Why don't you pick it up, read it and find out if you said anything about Ramsey?

A If the Court wants me to read it, I will be glad to read it.

MR. LEVNER: Your Honor, may we have a direction?

THE COURT: You really want him to read it?

MR. LEVNER: Or else I want the Government to state --

THE COURT: No, no. If you want a stipulation, ask for it outside the presence of the jury.

MR. LEVNER: May we approach?

THE COURT: Sure.

MR. LEVNER: Thank you, your Honor.

(At the side bar)

THE COURT: You have a two-sided stipulation, if you want a stipulation.

Stipulation One is that Ramsey's name was never mentioned.

Stipulation Two is nobody ever asked anything about Ramsey in that case.

MR. LEVNER: Okay.

THE COURT: Both sides agree?

MR. ENGEL: Yes.

Why don't you announce it, Judge?

THE COURT: I will do it.

MR. LEVNER: I will do it.

THE COURT: I will do it.

MR. LEVNER: I apologize, your Honor.

THE COURT: It's okay.

(In open court)

THE COURT: Ladies and gentlemen, we have a stipulation between the parties here.

Mr. Ramsey's name was not mentioned in the transcript shown to Mr. Dawson, which is now Ramsey's Exhibit A for identification.

MR. LEVNER: Yes, it is, your Honor.

THE COURT: Mr. Ramsey's name was mentioned?

MR. LEVNER: I merely am affirming what you said.

THE COURT: Okay.

MR. LEVNER: Yes, sir, it is.

THE COURT: All right.

MR. LEVNER: A for identification.

THE COURT: Mr. Ramsey's name is not mentioned in there.

On the other hand, Mr. Dawson was never asked about Mr. Ramsey in connection with that transcript.

Q If any testimony were given by you at that time,

would your testimony have been any different than it is today or the day before or yesterday?

MR. ENGEL: Objection.

THE COURT: I will permit it. It's a little bit speculative, but go ahead. Answer it.

A No, sir.

Q More particularly, I'm interested in Mr. Ramsey's meeting with Mr. Robinson in the summer of 1971. I believe it was at Mr. Robinson's apartment someplace on Fiddler Lane in Silver Spring, Maryland, a place called Twin Towers.

Do you recall that?

A I recall the apartment, yes.

Q Was that Apartment 1022, sir?

A I don't know, sir.

Q Was it on the tenth floor?

A I can't remember.

Q You have been there fifteen times, have you not?

A Yes, sir.

Q You testified earlier that you spent a great deal of time up there during the year 1971 and 1972 when you were in the narcotics business, did you not?

A Yes, sir.

Q You testified that Mr. Ramsey, I believe -- and

correct me if I am wrong -- came to that apartment unannounced, the buzzer rang from downstairs and said Ramsey is coming up, and Robinson said: "Hey, why don't you fellows hide in the bedroom," something like that.

Is that fairly accurate?

A There was no bell that was rung downstairs. There was no announcement that Ramsey was coming up. Things to that effect, definitely not.

Q Did you see, or were you in the living room when Ramsey entered?

A When Ramsey entered, no, sir, I was not.

Q Where were you?

A I was in the bedroom.

Q It's a one-bedroom apartment; is that correct?

A Yes, sir.

Q When you went in the bedroom had Mr. Robinson let Mr. Ramsey into the apartment yet?

A No, sir.

Q Mr. RAmsey was outside the apartment, he was outside the door of the apartment; you hadn't seen him at that point?

A That's true.

Q You proceeded along with another gentleman -- what was his name again?

A Bubbles; Jim March.

Q -- Mr. March into the bedroom; is that correct?

A Yes, sir.

Q You realized at that time there was somebody sleeping in the bedroom, if I'm not mistaken.

A Yes, sir.

Q Were the lights on or off in the bedroom?

A They were off.

Q You left the door open a little bit; is that right?

A Yes, sir.

Q Either you or Mr. March dropped to the floor, or both of you were on the floor of the bedroom?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And you didn't get out of that bedroom until Mr. Ramsey left; is that right?

A Not completely out of the bedroom until he left.

Q You had the door opened so you could see what was going on --

A Yes, sir.

Q -- in the living room; no question about that?

I'm not concerned with Mr. March. I understand

he's going to be a Government witness.

Do you know that?

MR. ENGEL: Objection, your Honor.

THE COURT: Yes, that is kind of gratuitous.

Q Mr. March was a former partner of yours, was he not, sir?

A Yes, sir.

Q He was in the shoe business, among other things?

A Yes, sir.

Q He was a drug addict?

A I can't be sure of that.

Q He was a sort of an unreliable gentleman as far as your business affairs went?

A I can't be sure of that. The business never got off the ground.

Q It's because he stole all the merchandise; wasn't that correct?

A I can't be sure of that.

Q But you assumed as much? You have stated it to people, have you not?

A Yes, sir. I have stated that.

Q He was a thief. His recollection is not as good as yours, is it?

MR. ENGEL: Your Honor, I move to strike that

question or whatever it was.

THE COURT: Yes, the entire statement --

Q During this --

THE COURT: Hold on, Mr. Levner.

MR. LEVNER: I apologize, your Honor.

THE COURT: Ladies and gentlemen, gratuitous statements by advocates are nothing more than gratuitous statements by advocates. Forget it.

All right. Go ahead.

MR. LEVNER: May I continue, your Honor?

THE COURT: Yes, go ahead.

Q You remained in that bedroom with Mr. March; is that correct?

A Yes, sir.

Q And the third party was sleeping in the bed?

A Not sleeping then.

Q Doing whatever.

There were three people in the bedroom, a woman, Mr. March and yourself?

A That's true.

Q And Mr. March and you were able to peek out the door and see what was going on in the living room; is that correct? You observed Mr. RAmsey come into the apartment and do something with respect to Mr. Robinson; is

that correct?

MR. ENGEL: Your Honor --

THE COURT: There were three separate questions.

MR. LEVNER: I will withdraw them.

THE COURT: All right.

Could you see out through the bedroom door?

THE WITNESS: Not the full -- I couldn't see the full living room; no, sir.

THE COURT: Could you see part of it?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q When you saw Mr. Ramsey -- did you see Mr. Ramsey enter or leave the apartment when you were in the bedroom?

A Yes, sir.

Q This was straight on, through no reflection or mirror or anything like that. You actually saw him?

A Yes.

Q You actually saw him carrying a bag?

A Yes.

Q You didn't know what was in the bag, di d you, for a fact at that time?

A No.

Q You assumed it to be something; is that correct?

A I assumed it to be the narcotics.

Q But you didn't know for a fact that it was narcotics because you hadn't seen it?

A Yes, sir that's true.

Q Then Mr. Ramsey left; there is no question in your mind about that?

A That's true.

Q And there is no question that Mr March was also in the bedroom and he observed the same things you did?

A I can't speak for Mr. March.

Might you say that Mr. March was in your presence during that period of time?

A Yes, sir.

Q He didn't go outside the bedroom?

A No, sir.

Q He didn't introduce himself to Ramsey?

A No, sir.

Q You didn't go outside the bedroom?

A No, sir.

Q You are sure?

A I'm sure.

Q Absolutely certain?

A That I didn't go out of the bedroom while Ramsey was there?

Q Yes, sir.

A No, sir, I did not.

Q This is so important to my client. Please think before you answer.

THE COURT: All right. Come on.

Q At no time did you leave that bedroom --

A No, sir.

Q -- while Mr. Ramsey was there?

A No, sir.

Q That is your testimony today?

A Yes, sir.

Q Those are the facts in October, I believe, of 1971, is that correct, when this incident took place? Was it October of '71, sir?

A Yes, sir, in that area. I can't -- I'm not going to --

Q No question in your mind, sir?

A As to what?

Q What you just testified to.

A I didn't testify that a specified time in October; no, sir.

Q Might you give us a specified time?

A I cannot, no, sir.

Q Could you give us whether it was the early part

of the month, later part of the month?

A No, sir.

Q Could you give us an apartment number?

A The apartment number?

Q Yes.

A No, sir.

Q Could you give us a floor?

A No, sir.

Q Could you give us an address?

A No, sir.

Twin Towers Apartment. That's all I knew.

Q I see.

It was the apartment or the diagram that you had drawn for Mr. Weissfeld, is it not?

A Yes, sir.

Q It is in a section known as Silver Spring, Maryland; is that correct?

A Yes, sir.

Q It's known as Twin Towers?

A Yes, sir.

Q I just want to identify it.

You used the expression "testing narcotics with addicts."

A Sir?

Q Did you use the expression "testing narcotics with addicts"?

A With addicts?

Q Yes.

A Yes, sir.

Q What was the purpose of testing the narcotics?

A To see what effect it had and to see what they had to say about them.

Q Did you find somebody on the street?

A We had people that we felt that was reliable.

(Continued on next page)

Q Could a person OD if you mixed it wrong?

A I imagine they could, yes.

Q And possibly get very sick and die?

A Yes.

Q How many times did you get these addicts to test this merchandise?

A Every time we got narcotics.

Q Would it be more than ten times?

A I would think so, yes.

Q More than fifteen times?

A No.

Q Did you ever use it?

A No.

Q These addicts, were they reliable people?

A We thought that they were.

Q You had known a couple of them; you wouldn't just test it on anybody?

A That is true.

Q You were pretty close to one or two of them?

A Yes.

Q You didn't sell them those narcotics, did you?

A No.

Q You let them use it free?

A That is true.

Q Isn't this the time your daughter became a drug addict?

A No.

Q The junkie?

A No.

Q She is not on drugs?

A She was.

Q She had never been on drugs?

A Yes --

THE COURT: Mr. Levner, you ask one question at a time, then you let him answer it.

Time for an afternoon break.

(The jury leaves the courtroom.)

THE COURT: Marshal, take the witness out.

(The witness leaves the courtroom.)

THE COURT: Mr. Levner, if you attempt to badger a witness again in this courtroom, I will have you in pieces. That was at best a bad imitation of a lawyer appearing on the Late Show. You are not going to do it here.

Take ten.

(Recess)

MR. ENGEL: 3525A has been handed to Mrs. Piel.

(In open court; jury not present)

MR. LEVNER: Can we have a side bar, your Honor, please?

THE COURT: Sure, but you don't need a side bar. There is no jury here. Is it something you don't want the other defense counsel to hear?

MR. LEVNER: That is correct. Just Mr. Engel present, and it need not be on the record.

(Side bar discussion held off the record)

THE COURT: Bring back the jury.

(Jury present)

THE COURT: Ladies and gentlemen, during the course of a criminal trial, it is possible for any participant to become somewhat emotional. When we become emotional, we speak faster than generally we would do. I want to make sure that you heard the last ten questions and ten answers.

Mr. Court Reporter, would you read it, please?

(Record read)

THE COURT: Bring back the witness.

T H O M A S F R A N K D A W S O N,

resumed.

THE COURT: You may continue.

CROSS-EXAMINATION CONTINUED

BY MR. LEVNER:

Q With respect to a meeting with Mr. Ramsey in the summer of 1971, you testified either Wednesday or Thursday that you sat in an aubomobile belonging to Mr. Ramsey that month in front of Warren's clothing store and talked to him for about five or six hours; is that correct?

A That is true.

Q You have a clear recollection of that conversation?

A No, sir.

Q Could it have been for a period of one or two hours?

A No, sir.

Q Could it have been for a period of time longer than five hours?

A I don't think so.

Q Other than that discussion or conversation you had with Mr. Ramsey on that date, do you know the time when that conversation was alleged to have taken place?

A No, sir.

Q Do you know the month?

A No, sir, I do not.

Q Do you know if any narcotics were passed?

A There were no narcotics passed.

Q Was there any money passed?

A No, sir.

Q Was there any contraband passed?

A No.

Q Was it merely a conversation and nothing more?

A Yes, sir.

Q Do you often have conversations in automobiles for five or six hours?

A No.

Q It would be something that is out of the ordinary, would it not?

A Yes, sir.

Q It would be something you might recall since it doesn't happen every day?

A As far as recalling that it happened, yes, sure.

Q Maybe something like seeing a pig fly; it doesn't happen that often and you would remember it.

You had occasion to meet with a special agent by the name of Landrum, did you not?

A Yes, I met Landrum.

Q A special agent also by the name of Atlee?

A Yes, sir.

Q In fact, you might even have shared a room or a floor at the Holiday Inn in Alexandria, Virginia; is

A Warren and myself.

Q Where was Tennessee?

A He was there at the table, too.

Q How much heroin did you cut?

A We cut a half a kilo of heroin.

Q After you cut it, how much heroin did you have?

A A ki.

Q Did you cut all of the heroin that you had?

A No, we didn't.

Q How much did you not cut?

A About half a ki.

Q Where was the heroin that you cut placed after you cut it?

A On the dining-room table.

Q During the time you were cutting it, did you have a conversation with Robinson and Tennessee?

A Yes, I did.

Q Who said what to who?

A Warren told us that the dope that he was cutting was for Ramsey.

MRS. PIEL: I am sorry, I didn't hear that again.

THE COURT: Go ahead. REad it back.

(Answer read.)

Q What else did Robinson say, if anything?

A I don't know if Warren said it or Tennessee or myself said it. He wasn't going to give Tennessee all of the dope.

Q Thereafter what happened?

A We bagged the narcotics up, 15 or 20 minutes later Ramsey -- a knock came on the door.

Q After the knock came on the door what, if anything, happened?

A Warren asked us to go into the bedroom.

Q Where did you go?

A We went into the bedroom.

Q Then what happened?

A The door was opened, heard Warren speak to the person at the door, they got into a slight argument.

Q Could you recognize the voice of the person to whom Warren Robinson was talking?

A Yes, I could.

Q Whose voice was it?

A Ramsey's.

Q Had you had occasion to talk with Ramsey before that time in October of 1971?

A Yes, I had.

Q How often?

A It was quite a bit.

Q Where was it that you had an opportunity to talk to him?

A On 9th Street and in the gambling joints.

Q Would you describe to the ladies and gentlemen of the jury Ramsey's voice?

A Yes, he has a high-pitched very distinct voice.

Q You said you heard an argument. Do you remember who said what to who?

A Ramsey was telling Warren that he was expecting more narcotics for the money he had fronted and Warren was telling him that these were all the narcotics he had.

Q Then what happened, if anything?

A Ramsey said, this is business, man.

Warren said, I will straighten it up later.

Ramsey said, okay.

I heard the door close.

Q I show youthis blackboard over here and diagram on it, which I believe is Ramsey Exhibit A.

Does that mean anything to you?

A That looks like the apartment.

THE COURT: REad it back.

(Answer read.)

THE COURT: Which apartment?

THE WITNESS: The apartment at Twin Towers.

MR. LEVNER: If your Honor please --

MR. SIFFERT: The Turner Exhibit A.

MR. LEVNER: May I have a voir dire, your Honor, with respect to --

MR. SIFFERT: It is in evidence.

THE COURT: It is already in evidence. It is too late now. Save it for cross.

MR. LEVNER: To have a marking where he was.

MR. SIFFERT: You can do that on cross.

THE COURT:Do that on cross.

MR. LEVNER: Okay. Fine. Thank you.

Q What room did you and Tennessee Dawson go into?

A Went into the bedroom.

Q Which room is that here?

A You have 2 BR's there, right? One of them is the bathroom.

Q Which one is the bathroom?

A The small one is the bathroom.

Q You went into the bedroom. Is that this room?

A Yes.

Q Was the door closed to the bedroom?

A Not quite.

Q Was it slightly open?

A Yes, it was.

MR. ENGEL: Your Honor, for the record Mr. Siffert's hand was in the upper left corner of that diagram.

MR. LEVNER: I have no objection to him marking it. In fact, I would welcome it.

THE COURT: If you want to mark it, Mr. Siffert, go ahead.

MR. SIFFERT: I don't think it is necessary.

MR. LEVNER: Mr. March can do it. He is closer.

THE COURT: I tell you what, you might want to wait for a number of reasons. I don't think you ought to mark it, Mr. Siffert.

Q After you heard Ramsey say, "This is business," what, if anything happened?

A Warren said he would take care of the rest of it later.

Q Then what happened?

A Ramsey said, "Okay." Heard the door close.

Q What did you do after you heard the door close?

A Tennessee and myself came out of the bedroom.

Q How soon after the door closed did you come out of the bedroom?

A One or two seconds after the door closed.

Q Where was Robinson standing when you came out of the bedroom?

A Maybe three to four feet form the front door.

LEADING Q Where was the package that you said had been on the dining-room table after it was cut? Where was that package when you came out of the bedroom?

A It was gone.

Q Do you know anybody named Ronald and Donald?

A Yes, I do.

Q Who are they?

A They are twins.

Q Do you know where they live?

A In Maryland, Landover, Maryland.

Q Did you have occasion to go to their apartment?

A Yes, I did.

Q When was that?

A The following day.

Q Who was present?

A Tennessee, Warren, one of the twins and myself.

Q What did you do there, if anything?

A The heroin that we didn't give Ramsey we cut up.

Q What did you do with that heroin?

A We put a one on it, made two packages, Tennessee got a package, Warren got a package.

MR. LEVNER: Your Honor, I object to that statement. He said the heroin we gave Ramsey, unless he saw Ramsey take it.

THE COURT: That part of it, yes.

MR. LEVNER: Unless he saw it, then I have no objection.

THE COURT: Did you see Ramsey take anything out of that apartment --

THE WITNESS: No, I didn't.

THE COURT: You didn't. Okay.

MR. LEVNER: Thank you, your Honor.

Q How much heroin did you cut up at Landover, Maryland?

A Half a ki.

Q How much had been left from the amount that you cut up and gave to Ramsey?

THE COURT: No, no. Rephrase the question.

Q How much was left from the amount that you cut up which Robinson said he was goinv to give to Ramsey?

A Half a ki.

Q After you cut it how much heroin did Warren Robinson take and how much heroin did Tennessee Dawson take?

A Half a kie apiece.

(Pause)

Q Can you identify Mr. Ramsey?

A Yes, I can.

Q Would you stand up and look around the courtroom and see if you can pick him out?

A He's got the brown suit on with eyeglasses.

MR. SIFFERT: May the record reflect the identification of the defendant Ramsey?

THE COURT: Yes.

Q Do you know his first name?

A No, I don't.

Q When did you see him?

A Where or when?

Q Both.

A I saw him on 9th Street Northwest, Washington, maybe November '71.

Q Could it have been later?

A Could have been.

MR. LEVNER: I object to this leading line. I want to request at this time -- I would appreciate it if the Court would grant me a side bar with respect to this testimony.

THE COURT: Sure.

MR. LEVNER: Thank you, sir.

(At the side bar)

THE COURT: Every time you ask him, "Could it be earlier?", "Could it be later?", he says so.

MR. LEVNER: Both Mr. Siffert and I know where this is leading.

THE COURT: I don't.

MR. LEVNER: I would like to tell the Court. I don't think it's fair what is going on, in my opinion. In the bill of particulars, it alleges that in April of 1972 this transaction allegedly went down. The witness is going to testify and has testified it occurred in 1971, November.

This leading testimony is either urging the witness to bring it forward to meet the allegation in the bill of particulars -- this is my belief, your Honor -- this is the transaction that they are going to relate that my client allegedly gave him 22 spoons of heroin.

THE COURT: I don't know.

How about it?

MR. SIFFERT: He testified that he saw Ramsey on 9th Street in November. The question that I have, there is a transaction that occurred at Mr. B's Bootery. That was later. That is what I was going to get to.

THE COURT: He saw him there in November?

MR. SIFFERT: He said he saw him on the street.

THE COURT: Bring it down to where the transaction happens, not where he meets him on the street.

MR. LEVNER: But don't lead him.

THE COURT: Oh, no.

(In open court)

Q Directing your attention to early 1972, did you have occasion to see Ramsey --

MR. LEVNER: Objection, your Honor.

THE COURT: No, not yet.

Q -- did you have occasion to see Ramsey at Mr. B's Bootery?

THE COURT: I will permit it.

A Yes, I did.

(Continued on next page)

Q Did you have a conversation?

A Yes, I did.

Q What did he say? What did you say?

A You said did I have a conversation with Ramsey at Mr. B's Bootery?

Q Yes.

A No, I did not have a conversation at Mr. B's Bootery.

Q Had you had a previous conversation?

A Yes, I had.

Q Where was that conversation?

A On 9th Street Northwest.

Q What did he say? What did you say?

A I told Ramsey that I had a good clientele to move some narcotics. He told me he didn't have any raw narcotics, all he had was scramble.

Q What did you understand him to mean by "scramble"?

A It means heroin that is cut as much as possible.

Q What did you say to that?

A He told me that the scrambled heroin was good, and I told him I would try to move it.

Q Did you have occasion to meet him later?

A Yes, I did.

Q Where was that?

A At the slack bar.

Q What happened?

A He brought me an ounce and a half.

MR. LEVNER: Could we have the time?

THE COURT: Sure.

When was it?

THE WITNESS: The latter part of '71, the beginning of '72.

MR. LEVNER: I renew my objection at the side bar.

THE COURT: I understand.

I will let it stand for now.

Q Did he charge you for it?

A Yes, he did.

Q How much?

A 1,200.

Q What was it that he gave you?

A He gave me an ounce and a half of scramble narcotics.

Q Is that heroin?

A Yes, it is.

Q Did you sell it?

MR. LEVNER: Objection.

Q What did you do with it?

THE COURT: That is better.

A Sold the majority of it and used some myself.

Q Did you pay Ramsey?

A No, I didn't.

Q Did there come a time that you started driving with Robinson again?

A Yes, I did.

Q When was that?

A The latter part of '71. why purchase from "R"

Q How long did you have Mr. B's Bootery?

A Maybe four months, five months.

Q How long did you have the slack bar?

A Maybe a month after I got Mr. B's Bootery.

Q For how long did you have it?

A Maybe three months.

Q When did the deal that involved cutting a half a ki of heroin which Robinson said was for Charles Ramsey, when did that take place?

A October '71.

Q How soon after that transaction did you get Mr. B's Bootery?

MR. LEVNER: Your Honor, I see where the Government is going and I object to this line of questioning.

He can't change the dates the witness testified to.

DEFENDANT GREEN: Yes, sir.

(Jury present.)

THE COURT: All right, bring in the witness, please.

Mr. Levner, do you wish to inquire?

MR. LEVNER: I will be very brief, your Honor.

J A M E S H E N R Y M A R C H resumed.

RECROSS-EXAMINATION

BY MR. LEVNER:

Q Mr. March, you mentioned Warren Robinson in your direct testimony, cross-examination. You have been to his apartment, is that correct?

A Yes, I have.

Q On a number of occasions?

A Yes, I have.

Q More than five times?

A Yes, I have.

Q More than ten?

A Possibly.

Q You testified that you, Warren and Tennessee had driven up a ramp to the tenth floor apartment, parked the car outside the apartment and entered it, is that correct?

A Did I testify to that?

Q Yes, you drove up to the apartment.

A I don't believe I did.

Q You testified that there was a ramp alongside the building.

A Inside the building, yes.

Q And you could drive up to the tenth floor?

A Yes, I did.

Q On how many occasions did you drive up to the tenth floor?

A Several.

Q You are absolutely certain of that?

A Yes,I am.

Q Were you high on those occasions?

A No, I wasn't.

Q Were you under the influence of any narcotics on those occasions?

A I had used narcoticson some of the occasions.

Q Were you hallucinated?

A No, I wasn't.

Q So I can categorize your testimony by saying that there is a parking spot in front of each apartment door in the Twin Towers Apartment House, is that correct?

A No, it isn't.

Q Did you park your car on the tenth floor?

A On what occasion?

Q On the occasion you said you saw Ramsey in the apartment.

A I don't remember if we parked our car --

Q Did you ever park outside the apartment on any of those occasions?

A Yes, we did.

Q That was the tenth floor apartment, is that right?

A Are you asking me did we park outside the apartment or did we go up the ramp?

Q Can you take the ramp up to the tenth floor?

A Yes, you can.

Q Absolutely sure of it?

A Yes, youcan.

Q How many occasions did you take the ramp up to the tenth floor?

A I don't know. Several occasions.

Q More than twice?

A Yes, I did.

Q I see. If somebody told you there was no ramp going up to the tenth floor, they would be mistaken, is that correct?

A To my best recollection, we drove up to the tenth floor, got out, walked through a door and went to his

apartment.

Q If I were to tell you that there is no ramp to the tenth floor, I would be mistaken?

A To my best recollection you would be.

Q You are testifying under oath andyou are testifying truthfully?

A To the best of my ability.

Q To the best of your ability, no question about that?

If I were to take the stand and testify under oath that there is no ramp alongside that building I would be lying, wouldn't I?

MR. SIFFERT: Objection,your Honor.

THE COURT: Yes. Rephrase it.

MR. LEVNER: I will withdraw the question.

THE COURT: All right.

MR. LEVNER: No further questions.

THE COURT: Okay.

Next, Mr.Goldberger.

RECROSS-EXAMINATION

BY MR. GOLDBERGER:

Q Mr. March, on Friday we recessed around noon-time as you recall, is that correct?

A About that time, I guess.

L Y N E T T E E V E R N G A M, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ENGEL:

Q Mrs. Everngam, how are you employed?

A Resident manager of Twin Towers Apartment, Silver Spring, Maryland.

Q Where are the Twin Towers Apartments located?

A 1110 Fiddler Lane, Silver Spring.

Q Where do you reside?

A I reside at 1110 Fiddler Lane also.

Q How long have you been the resident manager of those apartments?

A Approximately three years.

Q When did you enter into service there, do you remember?

A October of '72.

Q What is the name of the company that employs you?

A H. G. Smithy Company.

Q What business are they in?

A Realtors in Washington.

Q What is the nature of their relationship, if

Q Showing you Government Exhibit 29 for identification, can you identify that?

A This is a parking garage agreement. This is with the Shannon & Luchs Company.

Q What garage does it have reference to, if you know?

A Our garage inthe Twin Towers Apartment.

THE COURT: How about that swimming pool application, what swimming pool?

THE WITNESS: The swimming pool at theTwin Towers Apartments.

Q Showing you Government Exhibit 30 for identification, can you identify that?

A Yes.

Q What is that?

A This is a pull slip from H.G. Smithy Company indicating the tenants vacated the apartment and this pulls the record from the main company.

Q When is that executed?

A When the tenant vacates the apartment.

Q Showing you Government Exhibit 31 for identification, Mrs. Everngam, can you identify that?

A This is a floor plan of our one bedroom apartment in the Twin Towers.

[1340]

Q Are all the one-bedroom apartments at Twin Towers similar in design?

A Yes, they are.

Q Is the design of all of them reflected in the exhibit you have in oyur hand?

A Yes.

Q What is the exhibit number?

A 31.

Q The one-bedroom apartments in Twin Towers, are they absolutely identical to that floor plan?

A They could be reversed, facing the other way.

Q With respect to apartment #1022, do you know whether or not that is a design which reflects th t apartmen

A Yes. 1022 is similar to this in direction.

Q Would there be any differences, do you know, that would not necessarily be reflected in this document?

A The closets could possibly be different.

Q Directing your attention if I may, Mrs. Everngam to the middle of last week, did you have occasion to go to Apartment 1610 in your apartment building?

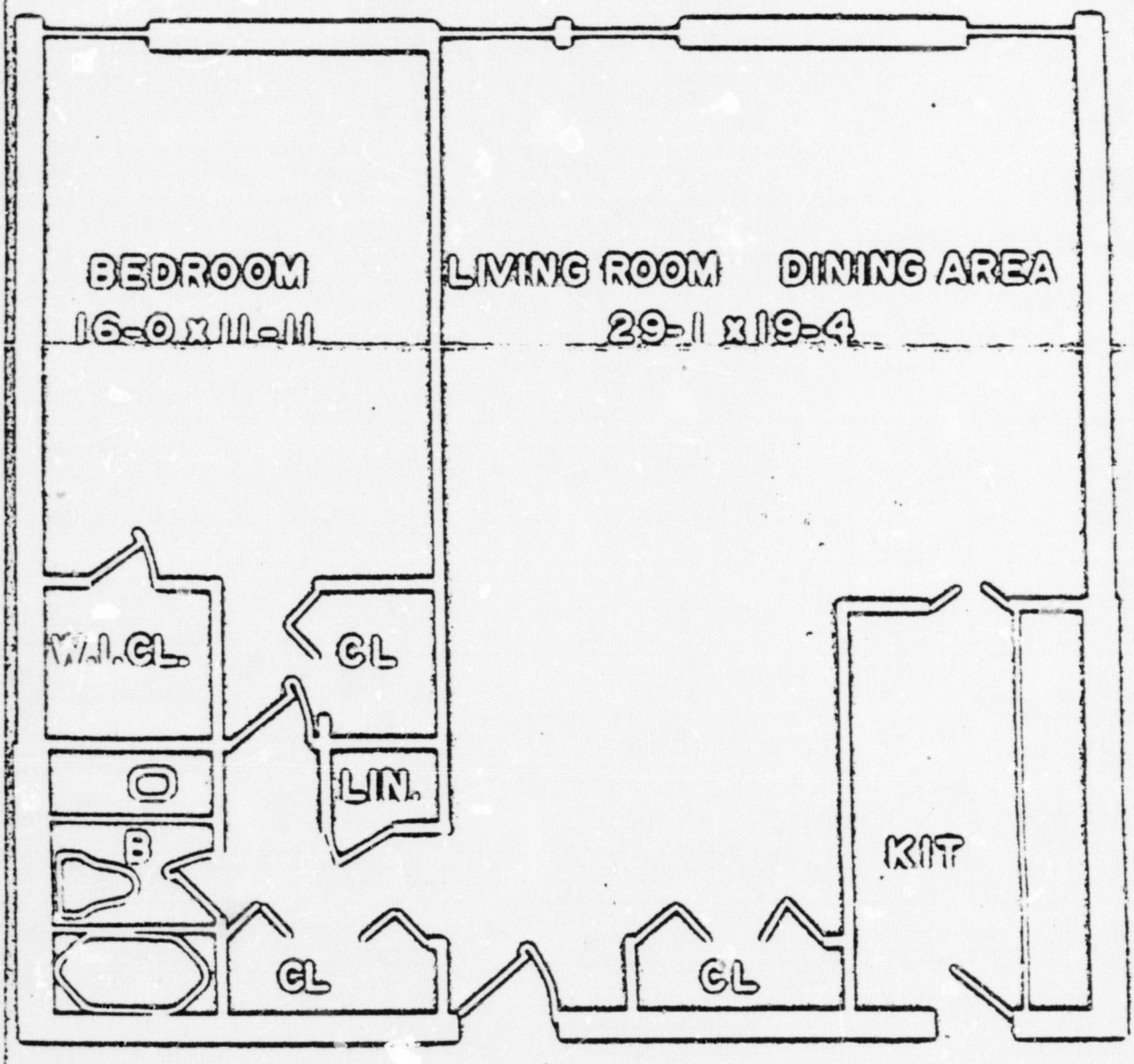
A Yes.

Q Is that apartment similar in design to the design reflected in Government Exhibit 31 for identification?

Sutton Square

GOVT. EXHIBIT U.S. DIST. CT. S.D. NY 31

ONE BEDROOM



Rentals and Management

H. G. SMITH CO.

A Yes, it is.

Q Would you be able to see the ramp that goes to the tenth floor at theTwin Towers?

A The ramp?

Q There is a witness who testified under oath that he would drive up on about five or ten occasions to the tenth floor and park his car outside Apartment 1022.

A No. We have a garage.

Q On the second floor?

A To the third floor.

Q Evel Knievel wouldn't even do that, would he? There is no ramp on the tenth floor?

A No.

Q The ninth floor?

A No.

Q The eighth floor?

A No.

Q The only way up there is elevator or staircase?

A Yes.

Q Did the Government or its agents ever appear at your office and ask to be taken to Apartment 1022?

A No.

Q They showed no interest in that particular apartment, is that correct?

THE COURT: Showing you what has been marked Defendant Ramsey Exhibit C for identification, can you tell us what it is?

THE WITNESS: A one-bedroom plan at Twin Towers.

Q Might that represent the physical setup of Apartment 1022 in 1972?

A Yes.

Q More particularly, during the summer months of 1972?

A Yes.

Q If I were to post it up on the blackboard -- if you have any trouble seeing it from that distance, I want to give you a smaller one if you don't mind and you can work with me, if it is the same one, is it?

A Yes.

THE COURT: That will be marked as Ramsey Exhibit D.

xxx (Defendant's Ramsey Exhibit D was marked for identification.)

(continued on next page.)

nd 2B

(In open court; jury present)

THE COURT: We are now in Courtroom 110. The jury is all present, defense counsel may be all present, and we have the blackboard.

CROSS-EXAMINATION CONTINUED

BY MR. LEVNER:

Q Ma'am, do you have Exhibit 31?

A No, I don't.

Q Here it is.

Does that fiarly and accurately portray the physical layout in Apartment 1022 in or about the summer of 1972?

A Yes.

Q That is a fair representation? In fact, it is a blueprint or an architect's rendering?

A Right.

Q Showing lengths, widths, dimensions, closets, bathroom facilities and kitchen facilities, something you would give someone who would be interested in renting that apartment?

A That is correct.

Q One of the witnesses earlier in this trial, by the name of Tennessee Dawson, drew a diagram of an apartment.

Are you able to see this diagram?

A Yes, sir.

Q Would you say this fairly and accurately represents Apartment 1022 in September of 1972?

MR. ENGEL: Objection.

THE COURT: I will let her answer it.

A He is missing a hallway.

Q It is fair but he is missing a hallway?

A Yes.

Q From this diagram that the witness drew, someone standing in the bedroom or lying on the floor of the bedroom could look into the living room, could he not?

A I don't believe so.

Q Let's look.

This is the door to the bedroom. Somebody standing in the doorway, I imagine, can look into the living room?

MR. ENGEL: May I ask the witness or ask Mr. Levner or yourself to ask the witness whether she can see the diagram from this distance?

MR. LEVNER: I did ask her that.

THE WITNESS: I could see.

Q If you were standing in the doorway of this

diagram, and this is the doorway right here, would you be able to see the living room?

A In that diagram, yes, sir.

Q Absolutely no question about it?

A In that diagram?

Q Yes, ma'am.

A Yes, sir.

Q In the diagram of Apartment 1022, which are are resident manager of, would a person standing or lying on the floor of the bedroom with the door open be able to look out?

A Yes.

Q What would he first see, the bathroom?

A He would see a closet there.

Q And possibly the bathroom?

A Yes.

Q Because you see, ma'am, the door swings in such a manner, this way, right --

A Yes.

Q -- that his view would be to the left side of the apartment; right?

A Yes.

Q And if you were standing in or lying down on the floor with the door wide open you could not possibly

see into the living room because there is a linen closet and a corridor blocking your view?

A That is correct.

Q Ma'am, did any member of the Federal Bureau of Investigation ask you for a physical description of that apartment?

A No.

Q Did any member of the Drug Enforcement Agency ask you for a physical description of that apartment?

A Of 1022?

Q Yes.

A No, sir.

Q As recently as today, has any Assistant U. S. Attorney or any member of any Government team, agency or Metropolitan Police Department in Washington, D.C., ev er asked you if a man standing in the bedroom can look out into the living room?

A No, sir.

MR. LEVNER: No further questions.

Thank you.

THE COURT: Mr. Matedero?

MR. LEVNER: Excuse me, your Honor. I had better introduce this in evidence.

THE COURT: Mr. Engel, do you have any

RECROSS-EXAMINATION

BY MR. LEVNER:

Q If you were here, Madam, could you see somebody leaving? If you were in the dining-room area, could you see somebody leave by the front door?

A Yes.

Q If you were in the living-room, could you see somebody leave by the front door?

A Yes.

Q If you were in the bathroom, would you see somebody pass through?

A Yes.

Q If you were in the bedroom, would you see anybody?

A No. Leave?

Q If a witness by the name of Tennessee Dawson said he saw somebody, he would be mistaken?

A I would think so.

Q If a witness by the name of Tennessee Dawson testified under oath that he saw somebody, he would be lying?

MR. ENGEL: Objection.

THE COURT: Sustained.

MR. LEVNER: No further questions.

MR. ENGEL: I have nothing.

to introduce the fact that this DiGregorio fellow was in the hospital, which has no probative value here at all. It is not evidence of any conspiracy, it is not evidence of any conduct on the part of any conspirator. It is only an item of proof that can set the jury's imagination running.

I can't for the life of me imagine why the prosecutor sought to bring that out. I was frankly even a little surprised that your Honor demonstrated some understanding of the nature of the injury.

THE COURT: You weren't around last time.

MR. SCHMUKLER: Neither was the jury, and I don't know that it does us any good to convey the impression to the jury there is something we wish we can tellthem about, but technically rules of evidence forbid us from telling something that we are not allowed to.

It serves no purpose for the Government or the defendants and it is only heightened when the Government on top of the innuendo that must attach to the inquiry about DiGregorio, you went to the Bronx and then went to my mother's. Without telling us the address, whereabouts was it.

THE COURT: That is fine.

MR. SCHMUKLER: I suggest again something is

being withheld from the jury which again sets their imagination running and gives them the idea that addresses, anything in connection with this witness can't be divulged because perhaps there is some danger.

MR. ENGEL: This witness' family has been threatened by some of the defendants named in this indictment and if you think for a minute, Mr. Schmukler, her mother's address, is coming out in this trial, you are crazy and I want to tell you something else about DiGregorio's injury. That injury was proven in the last case and the Second Circuit upheld the proof he was shot by Fugliese as relevant proof of the conspiracy.

I am not saying that is proper in this case, the Judge has ruled otherwise, but I have not gone into the fact of the shooting and I explicitly asked her not to and that is why I tried to lead her.

MR. POLLAK: Let me correct something Mr. Engel said.

It was not proved --

THE COURT: Would you believe I was there the last time and I read the Second Circuit opinion.

Everybody cool down.

MR. SCHMUKLER: I don't know why we are near

the subject.

THE COURT: Everybody cool down.

Take ten minutes, and go have a cigarette or something.

(Recess.)

(continued on next page.)

Q And you told him that?

A Yes.

Q Did he say anything?

A He told me, "Annie, don't do that. You know I am sitting down here dirty."

Q What did "dirty" mean to you?

A I knew that Paul had narcotics in the room.

Q Did there come a time in about the same period of time when Paul saw you anywhere in Washington?

A Yes. I was on my way to -- back to Pinky's house on Georgia AVenue and he called to me. He saw me in my car and he called.

Q Where were you, do you remember?

A On Georgia Avenue.

Q Do you remember where on Georgia Avenue?

A About midway, the next block up from Warren's Men's Shop.

Q Miss Ellis, did there come a time in about the same period of time, mid-summer of 1972, that you met Charles Ramsey?

A Yes.

Q Do you see him here in court today?

A Yes.

Q Would you please point him out and tell the

jury and the Court where he is sitting and what he is wearing?

A Stand up?

Q Please, if you would.

A He is sitting between -- he is sitting right there with the brown suit on --

MR. LEVNER: We concede that it is Mr. Ramsey.

THE COURT: Okay, fine. The identification is made and conceded.

MR. LEVNER: Can we have a little bit of time, date and place, your Honor, if possible?

THE COURT: We can, if possible, sure.

Q Did there come a time in mid-summer of 1972, Miss Ellis, when you met Ramsey?

A Yes.

Q Do you remember when that was?

A It was during the week, late August. That is as near as I can remember.

Q How did you meet him, could you tell us, please?

A I was at Pinky's house and he and Pinky came to her apartment, and that is when I was introduced to him.

Q What happened after that?

A We got into his car and rode down to 9th Street. We stayed a couple -- a while, a short while.

Q Do you remember where?

A 9th Street and Florida Avenue.

Q Were you in any particular establishment?

A No, we didn't go into anything.

Q Where were you then?

A Just on the street.

Q During the time that you stayed in the def Miller's apartment, did you have occasion to hear a te or overhear a telephone conversation that Warren had?

MR. LEVNER: I object to this, your Honor leading.

THE COURT: No, I will permit it; trying t zero in on something, I think.

MR. ENGEL: Yes, your Honor, I am.

THE COURT: All right.

Q You may answer the question.

A Would you repeat the question?

MR. ENGEL: Would you read it back, Mr. Re

THE COURT: REad it back.

(Answer read.)

A Yes.

Q What did you hear him say?

A I was just -- I heard him talking to a pers named Doc --

A Yes.

Q During the conversation you just described about the Drug Fair, did Miss Miller say anything else to you?

A She said, "Somebody is getting ready to get screwed."

Q Did anyone tell you anything more about that package?

A Later on, through conversations between the three of us, I recall that the package was being prepared for Ramsey.

Q Did somebody say that?

A A conversation between the three of us.

THE COURT: Who said it, if you remember?

THE WITNESS: I don't recall who actually spoke the words out of their mouths.

Q Did you say it?

A No, I didn't.

MR. LEVNER: I move to strike.

MR. MATEDERO: I move to strike that. I would like the witness to identify who the three people are.

THE COURT: Who are the three people?

THE WITNESS: The three people present were Warren, Pinky and myself.

THE COURT: I know you have a continuing objection.

MR. LEVNER: Just the month, please.

THE COURT: Do we have a month or a day? Do you recall?

THE WITNESS: Does the summer of '73 help you any?

THE COURT: That is pretty good for openers.

MR. LEVNER: Can we get the month?

THE COURT: We don't know, we will try.

Q Do you know the month, Miss Ellis?

A No, I don't.

MR. ENGEL: Your Honor, may that question that was pending now be entered?

THE COURT: Yes.

Q What did Kelly say he had done with it or said he would do with it?

A That he would give it to Ramsey.

Q Thereafter, did you see Mr. Ramsey?

A Yes, I did.

Q Where did you see him?

A On 9th Street, N.W., Washington, D.C.

Q In any particular vicinity of 9th Street?

A Florida Avenue runs --

Q Who was present when you saw him?

A Just Mr. Ramsey and I.

Q Did you have a conversation?

MR. LEVNER: May we have a time, place, date?

THE COURT: She has already given a place and it was shortly thereafter some time in the summer. I don't know how much more we could get.

MR. LEVNER: Day or night?

THE WITNESS: It was in the evening, night.

Q Did you have a conversation?

A Yes.

Q Who was present?

A Mr. Ramsey and I.

Q What did you say, what did he say, to the best of your recollection?

A I was on 9th Street. I was looking for Kelly and Ramsey and I got into a conversation about the cocaine that I had gotten from Mr.Drake and I told him that I was interested in just getting Drake's money back and that was the end of the conversation.

Q Did you mention the name Drake?

MR. LEVNER: Objection. Asked and answered.

THE COURT: She said -- I will permit it.

A Did I mention the name Drake?

Q Yes.

A I don't recall.

Q Did he say anything when you said that to him?

MR. LEVNER: Objection. That is all she said that was said and that was the end of it.

THE COURT: She said she didn't recall. I don't know where we are going from there, but one way or the other, the question is objectionable.

MR. LEVNER: Thank you, your Honor.

Q What happened after this conversation?

A Shortly thereafter I received the money from Kelly.

Q Did you have a conversation with him at that time?

A No.

Q What if anything did you do?

A I returned to New York to give Mr. Drake his money. I went to Sandy's Luncheonette on 137th Street and Seventh AVenue and gave it to Mr. Drake's girl friend, Sandy.

Q Directing your attention to a couple of weeks after this, Miss Ellis, did you have occasion to see Mr. Kelly and Mr. Ramsey again?

A Yes.

Q Where were you?

A My Landover apartment.

Q Do you remember what time, day or night, you met them?

A It was in the morning.

Q Did you have a conversation?

A Yes, I did.

Q What did you say, what did the others say if anything, do you recall?

A I recall that we discussed the possibility of --

MR. LEVNER: Objection. I would like to know what was said, not what she recalls.

THE COURT: Who said what to whom?

Q Do you recall?

A No.

Q Do you recall the substance of the conversation?

A Yes.

Q Tell us, please, what the substance of the conversation was.

A My ability to make a connection in New York.

Q Connection for what?

A Narcotics.

Q What kind of narcotics?

MR. LEVNER: Objection. It is leading the witness at this point.

THE COURT: I will permit it. Go ahead.

A The connection that I knew dealt with cocaine.

Q Was that what was discussed at that time?

A The possibility of obtaining another kind of narcotics was.

Q What kind?

A Heroin.

Q Thereafter, did you have occasion to go anywhere?

A Yes.

Q Where did you go?

A We rode up to New York.

Q Who is 'we'?

A Kelly, Ramsey and my daughter Mtacey, and my cousin Chris.

Q Where did you go, do you recall?

A We went to New York to see if I could locate the connection that I knew.

Q Who was that?

A Mr.Drake.

Q Where did you go in New York?

A We went to a place called Taylor's Lounge.

Q Where is that?

A It is located in Mount Vernon.

MR. CIAMPA: I will object and ask for an

instruction as to the fact that this lounge is not connected with any defendant in this case.

THE COURT: I don't know yet.

MR. CIAMPA: It is beyond the scope of the pleadings, wherever it is.

THE COURT: We will see.

MR. ENGEL: May I continue?

THE COURT: Yes.

Q Where is Taylor's Lounge located?

A Third Street in Mount Vernon.

Q What happened when you went there?

A I saw Mr.Drake. I went downstairs and told him that I wanted to obtain narcotics. I told him that -- would you like me to continue?

Q Please.

A I told him that I know he only dealt with cocaine but I was more interested in hit ability to make arrangements for me to get heroin.

End 2B

Q What did he say, if anything?

A He said -- he told me, he said, "You know I don't deal in stuff, but my partner does."

Q What happened after he said that?

A Shortly after that his partner came downstairs. He asked me who was in the car with me.

MR. LEVNER: Objection, your Honor, unless we know the partner.

Q What is the name of the partner?

A I only know him by Gus.

Q Any other name?

A No.

THE COURT: Okay.

Just hold it for a second right here.

Mr. Engel, Mr.Siegal, Mrs.Piel and Mr. Cohen, I want to see you inside.

(In the robing room.)

THE COURT: I excluded Agent Mangan once.

MR. ENGEL: Mr.Siffert just handed me a note which just said he was here, Judge.

THE COURT: Get him out.

MR. ENGEL: All right. I will have Mr. Siffert tell him.

MR. COHEN: Judge, while we are here, most

check page number

boy friend Garrison drove up behind us.

I told Renee the situation that had happened between Gus and Buddy and myself, and I asked if she could do anything as far as Garrison was concerned, and she said no, if Buddy and Gus said no, there wasnothing Garrison could do.

Q What did you do after that?

A I told Mr. Kelly, Mr.Ramsey what had happened. I mentioned Gus's name, and Ramsey said that Gus was a personal friend of his.

He got out of the car, he went inside the bar to talk to Gus, and he returned.

Q Did he say anything when he returned?

MR. GOLDBERGER: May I inquire if he is listed as a co-conspirator as well?

MR. ENGEL: Yes.

Q Do you recall anything he said when he came back in the car, if anything?

A To the best of my recollection, he said nothing was happening.

Q Did there come a time, Miss Ellis, when you made a second trip to New Y ork?

A Yes.

Q When was this?

A To the best of my recollection, it was shortly after my trip to see Buddy and Gus.

Q What happened on this occasion?

A Well --

MR. GOLDBERGER: Judge, before she gets into it, I object. I move to strike the testimony regarding the transactions or the meetings that she is just talking about.

THE COURT: I will permit it to stand.

Q You may continue, Miss Ellis. What happened on your second trip?

A Yes. The fact was known to both Mr. Ramsey and Mr. Kelly that I was associated with Paul --

MR. LEVNER: Objection, your Honor, conclusion.

THE COURT: When did this happen?

MR. ENGEL: It is, again, the summer of 1973, your Honor.

THE COURT: All right. Tell us exactly who said what to whom, as much as you can remember.

THE WITNESS: Yes, sir.

Q Miss Ellis, if I may, the question pending before the objection was, what happened on the second trip?

Answer that question.

A I returned to New York to locate Paul's previous

connection, Georgie.

Q Is that the person whose picture you identified earlier today?

A Yes, it is.

Q And who did you come with?

A Ramsey and Kelly and my daughter Stacey.

Q Did you have a conversation with Kelly and Ramsey prior to coming?

A The conversation on my part entailed the fact that I knew of Georgie and his dealings in narcotics.

Q Did you say that?

A Yes.

Q To whom?

A To Ramsey and Kelly.

Q Where?

A In my apartment in Landover.

Q Where did you go when you came to New York?

A The vicinity of Westchester Avenue in the Bronx.

Q Did you go anywhere before you went there?

A If I recall, we stopped at my mother's house.

Q And then proceeded to Westchester Avenue?

A Yes.

Q Who was with you when you went there?

A Ramsey, Kelly and Stacey.

Q What happened when you got there?

A I got out of the car with Stacey, I walked up to the street where I was familiar with Paul meeting Georgie. From previous conversations with Paul, he told me that that street is where Georgie lived.

Q Had you been to that street before?

A Yes.

Q Had you been in the vicinity of that street where you were on this occasion before?

A Yes.

Q When had you been there?

A With Paul.

Q When?

A Throughout our relationship.

MR. LEVNER: Could we have the name of the street?

MR. ENGEL: It was Westchester Avenue, I believe, Mr. Levner.

MR. LEVNER: And the cross streets, please?

MR. ENGEL: Do you want to ask that, Mr. Levner?

MR. LEVNER: I am asking the Court, the Judge.

THE COURT: Do you know what the cross streets were?

THE WITNESS: No, sir.

THE COURT: All right.

Q What happened when you got to that vicinity? Will you please tell the Court and jury?

A Yes. We got out of the car, Stacey and I. We walked up the street to the approximate location where I had seen Paul meet Georgie before. I didn't know the exact house.

There was a woman there and I asked her if she knew where Georgie lived. She said yes, she pointed the house out.

MR. SCHMUKLER: Objection, your Honor.

THE COURT: All right. You asked this woman and then youwent to a house, is that correct?

THE WITNESS: No, sir. I said I asked her if she knew where Georgie --

MR. SCHMUKLER: Objection.

THE COURT: Yes.

I don't care -- no, no. Testify to what she asked.

Q What did you ask? What did you say, Miss Ellis?

A I asked her if she knew where Georgie lives.

Q Did she do anything, without saying what she said?

MR. GOLDBERGER: I object. It is the same grounds as if she said anything.

THE COURT: No, I will permit it.

Go ahead.

A She pointed to the house. She said, "Yes, (indicating)."

MR. SCHMUKLER: Objection.

THE COURT: I don't want to hear what she said.

Go ahead.

Q Did you ask her anything else? Just, again, Miss Ellis --

A No,no.

Q After this, what did you do, after your meetin

A During my conversation with this woman, Mr. Engel, she told me that --

Q No, no --

THE COURT: No, no, don't tell us. What did y do?

THE WITNESS: I returned to the car.

THE COURT: You went back to the car. Okay.

Q Thereafter, where did you go, if any place?

A Returned to Washington.

Q Who were you with?

A Ramsey, Kelly, Stacey and I.

Q Did you have a conversation with Ramsey or Kel when you got back to the car?

A Yes.

Q What did you say?

MR. ENGEL: Your Honor, I better have a side bar here.

THE COURT: All right.

(In the robing room.)

(Present Mr. Engel, Mr. Schmukler, Defendant Turner, Mr.Weissfeld, Mr. Levner and Mr. Matedero.)

THE COURT: Okay, let me tell you what she is going to say.

Do you want to know where the street was?

She is going to say that Georgie went to jail.

MR. ENGEL: No, she is not.

MR. SCHMUKLKER: She said Georgie moved out of the neighborhood.

MR. ENGEL: The woman told her that Georgie was still in jail and she went back and told Ramsey that Georgie -- I don't know what she told Ramsey, but I know she told him something.

In any event, I wanted to instruct the witness not to mention that, so can I just have her excused just to say Georgie was not there or Georgie was still away or something to that effect?

MR. LEVNER: She said Georgie doesn't live here

A Yes.

Q To the best of your recollection?

A Yes.

Q During the course of cross-examination by Mr.Tate's attorney Mr. Cohen, he put certain questions to you and you gave certain answers, did you not?

a Yes.

Q Isn't it a fact, Madam, you testified you have lied on three or four separate occasions before a jury in the State of Maryland?

A I testified that I lied.

Q While you were under oath?

A Yes.

Q Did you tell Mr. Engel you had lied?

A Yes.

Q At his office?

A Yes.

Q In the presence of your mother?

MR. ENGEL: Objection.

Q Your mother has never been in Mr. Engel's office?

A Yes.

Q Your father, Mr. Wallace Ellis, is that his name?

A Yes.

Q Was he ever present at any United States

Attorney's office?

A In Mr. Engel's office, no.

Q Or any Assistant United States Attorney's office on Januaryt 19, 1976?

A My father came to see me.

Q Did your mother come and was she present on the 7th or 9th floor in the United States Attorney's office on January 19, 1976?

A January 19, I don't know the date.

Q You should know the date --

MR. ENGEL: Objection.

THE COURT: Don't argue with her.

MR. LEVNER: I apologize.

Q January 19th is the date you pleaded guilty before Judge Duffy. Do you recall that date?

A I recall the day I pleaded guilty. I do not recall the date.

Q Do you recall visiting a prisoner in the Federal House of Detention?

A Do I recall? Yes.

Q Was that prisoner a man by the name of Kelly?

A Yes.

Q Is this the Kelly you testified about during late yesterday?

A Yes.

Q Concerning a heroin and a cocaine deal, where yoiu had given him some cocaine or some heroin?

A Yes.

Q And this is the same man that you met in 1972 in Washington, is that correct?

A Yes.

Q Do you see him in the courtroom today?

A Do I see Kelly in the courtroom?

Q Yes, the man you gave the cocaine and heroin to.

A No.

Q You answered a number of questions the Government put to you, Mr. Engel put to you, during the course of your direct testimony in this case, did you not?

A Yes, I answered his questions.

Q And that lasted for almost three days, did it not?

A Yes.

Q Had you heard those questions put to you before?

THE COURT: Those or similar questions is what you really mean.

A Similar.

Q Were they put to you before by Mr. Engel?

A Yes.

Q Over how many days, period of time were those questions put to you?

A I don't recall.

Q Was it more than once?

A Yes.

Q Was it more than twice?

A Yes.

Q Was it more than three times?

A Possibly.

Q Was it more than five times?

A I don't recall.

End 3A

Q Mr. Ciampa asked you a question, how many times you had seen the Assistant United States Attorney, did he not?

A Yes.

Q I believe your answer was you saw him at least ten times.

A Yes.

Q During those ten times, that was over a period of six months, I take it?

A I don't recall the time span.

Q You were good at the seasons.

How many seasons did it entail?

A I started holding conversations with Mr. Engel after his vacation in September.

Q And those conversations were had in the presence of Mr. Siffert?

Do you know Mr. Siffert?

A Yes, I know him.

Q Was he present during those conversations?

A On occasion.

Q Did he hold conversations with you in private, Mr. Siffert?

A No.

Q And during the course of those discussions or

conversations with Mr. Engel and Mr. Siffert, were certain agents from the DEA present on occasion?

A On occasion.

Q And was that large notebook or notebook similar to that on Mr. Engel's desk --

A Yes.

Q -- on occasion was it open?

A Yes.

Q And on occasion, might Mr. Engel look at the book and ask you a question?

A He might have.

Q For how long did he ask you questions?

A During the course of a day?

Q Yes, ma'am.

A Possibly half the time we spent together.

Q How much time did you spend together?

A Four or five hours a day.

Q If my math serves me right, you met him on ten occasions, you sepnt some forty or fifty hours with him?

A Possibly.

Q Reading those questions and those answers?

A No.

Q Never reading those questions and never reading those answers?

A The questions in Mr. Engel's notebook?

Q Yes.

A No.

Q Never read them?

A No.

Q Never referred to notes?

A Not in his notebook.

Q Possibly pieces of paper, documents?

A Possibly.

Q Possibly the transcript of your testimony you gave in Maryland?

A Yes.

Q Did you have occasion to read it?

A Yes.

Q Did you tell him you were lying when you testified there?

A Yes.

Q You did tell Mr. Engel that you lied when you testified in Maryland?

A Yes.

Q When did you tell him you had lied?

A I don't recall.

Q Isn't the first time anybody learned the fact you lied was when Mr. Cohen cross-examined you?

A No, it's not.

Q You never told anybody in this courtroom during the Government's caes that you liked, did you?

MR. ENGEL: Objection. It's a legal question.

THE COURT: It sure is a legal question.

Mr. Engel certainly could not have gone into anything in Maryland. You fellows can.

MR. LEVNER: I will withdraw the question.

MR. GOLDBERGER: For the record, your Honor, I object to your Honor's remark. I don't think that is the law. I object.

MR. LEVNER: Your Honor, at this time I will offer in evidence Government's Exhibit 3430, a certified transcript of Fred Sapperstein, Official Court Reporter, State of Maryland, United States District Court; the testimony of Mrs. Ann Lane Ellis.

MR. ENGEL: The Government joins in the offer of Mr. Levner, and I believe that the defendant Tate joins in that offer.

MR. COHEN: All defendants join in that offer.

MR. ENGEL: I hand up the original, at least the best copy we have.

MR. LEVNER: The Government had three days to offer that, your Honor. We are offering it.

[1682] Ellis-cross

Charles Ramsey is offering it.

MR. ENGEL: That is another legal question, your Honor.

THE COURT: I don't really care, Mr. Levner. I don't care at all.

xxx (Government's Exhibit No. 3540 received in evidence.)

Q In those fifty hours with Mr. Engel, did you have an attorney present?

A Yes.

Q A Nick Barbero? Does the name Nick Barbero mean anything to you?

A No.

Q Would you tell us what you did during those fifty hours with Mr. Engel and Mr. Siffert?

A We discussed my involvement in narcotics.

Q For fifty hours?

A We discussed my involvement in narcotics.

Q Were you asked to repeat certain answers to certain questions?

A Yes.

Q Did it get to a point where you could almost repeat it from memory?

A No.

[1683] Ellis-cross

Q You weren't surprised when Mr. Engel asked you any questions in the last three days, were you? Your answers flowed?

MR. ENGEL: Is that a question?

THE COURT: I don't know if it is a question. It sounds like summation.

It's up to the ladies and gentlemen of the jury to make that determination.

Q I don't recall you answering Mr. Engel's questions unduly long.

MR. ENGEL: Same objection.

THE COURT: Same ruling.

Q Those questions had been put to you hundreds of times by Mr. Engel and Mr. Siffert; had they not?

A I don't recall.

Q Your testimony was well rehearsed --

MR. ENGEL: Your Honor --

THE COURT: Wait a minute.

Let the witness answer the question.

A I don't recall being rehearsed hundreds of times.

Q Maybe fifty times?

A I don't recall how many times.

Q But you remember fifty hours?

A I don't remember fifty hours. That was yours.

Q Forty hours?

A I remember spending time, hours, with Mr. Engel.

Q How many hours did you spend with the DEA about this case?

A I don't recall.

Q. Five minutes?

Don't you remember in response to Mr. Cohen's question --

THE COURT: Was the last question withdrawn?

MR. LEVNER: I thought I had an answer.

THE COURT: I didn't get one.

It was more than five minutes?

THE WITNESS: Yes.

Q Was it more than five days?

A No.

Q How many hours did you spend with the DEA?

A I do not recall.

Q Can you give us the names of those agents you spoke to?

A Yes.

Q Who?

A Fred Moore.

Q How long did you speak to him?

A A couple of hours.

Q Who else?

A Manjan.

Q How long?

A Shorter than the time I spent with Fred Moore.

Q Who else?

A I don't recall speaking to anyone else.

Q YOu testified that you knew a man by the name of Paul DiGregorio?

A Yes.

Q You met him in 1969; correct?

A Approximately, yes.

Q But he was married?

A Yes.

Q You got pregnant and you married a man by the name of Luther Lane?

A Yes.

Q You moved to Alabama; is that correct?

A Yes.

Q And you had your child?

A I had my child before I moved to Alabama.

Q While you were married to Mr. Lane?

A Yes.

Q But Mr. Lane worked for a living, did he not?

A Occasionally.

Q In fact he went to school, did he not?

A I don't remember him going to school.

Q He never gave you a car, did he?

A No.

Q How about that ring on your right hand; is that from Paul DiGregorio?

A Yes.

Q Mr. Kelly, the last fellow you took up with, the fellow you visited in jail before you pled guilty, did he pay for your child's schooling in Washington?

A Yes.

Q Did you discuss your testimony about Mr. Kelly before you pled guilty with Mr. Kelly?

A Repeat that.

Q Did you tell Mr. Kelly in the House of Detenti on the 19th when you pled guilty when you visited him that you were going to mention his name in this case?

A I don't recall.

Q Do you recall meeting him that day?

A Sure.

Q Paul mentions a man named Ramsey sometime in the summer of 1972; is that correct?

A Yes.

Q You hadn't met Ramsey?

A No.

Q But you remember the name?

A Yes.

Q And this conversation was said in Twin Towers sometime in the summer of 1972; is that right?

A Yes.

Q You hadn't spoken to Ramsey or a man named Ramsey on the phone?

A No.

Q The next time you meet Ramsey, several weeks or months later, is that right, the summer of 1972?

A Yes.

Q You meet him on 9th Street?

A I meet him at the Twin Towers.

Q You didn't sell him any drugs on that occasion, did you?

A Did I do what?

Q Sell him any drugs.

A No.

Q And you meet him once again driving up to New York, with a man by the name of Kelly; is that correct?

A Ramsey, Kelly and I drove up to New York together.

Q There were two young ladies present, too, were there not?

A Two young ladies? My daughter and my cousin.

Q Christina is a woman?

A Yes.

Q And she drove up with you to New York City; is that right?

A Yes.

Q Do you recall when you left Maryland?

A No.

Q Do you recall the time?

A No.

Q The month?

A It was a warm season.

Q It was a long summer?

A It was a warm season.

Q Forgive me.

You don't know whether it was May?

A No.

Q Or June?

A No.

Q Or July or August; do you?

A I don't recall the exact month.

Q How about the year?

A 1973.

Q And this young lady, Christine, how old was she, when she drove up with you?

A About 14.

Q Do you see her in this courtroom today?

A No.

(Continued on next page)

Q When you drove to New York was any narcotics purchased by Kelly or by you or by Ramsey?

A No.

Q Did you stay overnight?

A No.

Q Did you come back with Christine?

A Yes.

Q Did you come back with Stacey?

A Yes.

Q Whose car was it?

A Whose car?

Q Yes.

A I recall it was my car.

Q All five of you in the Cugar, is that correct?

A Yes.

Q On the second occasion oyu drove up to New York with Ramsey and Kelly, is that correct?

A Yes.

Q Do you recall what month that was?

A It is a warm season.

Q Do you recall the year?

A Still during 1973.

Q Do you recall whose car you went up in?

A I recall it being my car.

Q Do you recall bringing Stacey with you?

A Yes.

Q You drove to Westchester Avenue, is that right?

A Yes.

Q Because you thought you remembered a man named Georgie lived there, is that correct?

A I remembered Georgie being in the vicinity of Westchester Avenue.

Q Do you know the cross streets?

A I don't recall the cross streets.

Q Or the apartment house numbers to guide you to that location?

A I don't remember any apartment house numbers. There were no apartments. There were two family homes there.

Q Was any narcotics bought at that time?

A No, sir.

Q Or any money passed at that time?

A No, sir.

Q Going back, you came back from New York on one occasion with some cocaine, did you not?

A Yes.

Q You gave this cocaine to a man called Kelly, did you not?

A Yes.

Q This is the same man you say drove with you on two occasions with Charles Ramsey to New York? This is the same man you visited in the House of Detention, is that correct?

A Yes.

Q He said he gave it to Ramsey, did he not?

A Yes.

Q Did you see him give it to Ramsey?

A No, I did not.

Q He, meaning Mr. Kelly, gave you the money for that cocaine, did he not?

A Yes.

Q But you were living with Mr. Kelly at this time?

A Yes.

Q He was paying for your daughter's school?

A Yes.

Q He was paying the rent in the apartment?

A Yes.

Q He was paying for the food and clothes?

A Yes.

Q You were selling him cocaine?

A I don't recall selling Kelly anything.

Q I see.

A I don't recall.

Q When you testified Thursday, when I asked you this question and you gave this answer on Thursday, and I will read the question now to you --

"Q Do you recall being asked whether or not you visited Chan and Conchita's house when you testified as a witness before a federal trial jury in the District of Maryland in September of 1972?

"Do you recall being asked that question?

"A No, I don't."

Was your answer, "No, I don't," to my question a lie on Thursday?

A No.

MR. COHEN: No further questions, your Honor.

THE COURT: Anybody else?

MR. LEVNER: One or two questions.

RECROSS-EXAMINATION

BY MR. LEVNER:

Q You testified before a federal grand jury in 1975?

MR. ENGEL: Objection.

THE COURT: This is way outside the scope.

MR. LEVNER: I will rephrase the question.

Q Did you tell Mr. Engel or any Assistant United

States Attorney before you went in to the grand jury that you had lied in a federal courthouse in Maryland?

A I don't recall.

Q When for the first time do you recall, ma'am, that you told Mr. Engel or any Assistant United States Attorney that you had lied at the federal courthouse in Maryland?

A I don't recall.

Q Do you recall ever telling him?

A Yes.

Q Were you ever confronted with your testimony?

A Yes.

Q Did you look at it?

A Yes.

Q Did you have an opportunity to read it?

A Yes.

Q How recently have you read it?

A I don't know how recently.

Q Do you know how many times you read it?

A I have been over it several times.

Q There are some 20-odd pages in it.

Do you recall on how many occasions you read that testimony you gave in Maryland?

A No.

Q Was it more than once?

A Yes.

Q Was it as recent as the last week --

A No.

Q -- that you read it?

A No.

Q Was it within the last month that you read it?

A Possibly, yes.

Q Yet you are having a great deal of difficulty remembering the questions and answers that you read a month ago.

MR. ENGEL: Objection. It precisely misstates the testimony.

MR. GOLDBERGER: Please just state an objection. I am sorry.

THE COURT: You, too? Who is making the rulings here?

MR. GOLDBERGER: I am sorry.

THE COURT: The objection is sustained.

Q By the way, did you tell the grand jury you had lied under oath?

THE COURT: Are you sure you want to go into this now?

MR. LEVNER: Would you like a side bar?

THE COURT: I don't want a side bar.

I want to know if you are sure you want to go into this at this time.

MR. LEVNER: If your Honor please, may we have a side bar?

THE COURT: There is no need for a side bar.

MR. LEVNER: There is.

It's the first time the Court has pointed a finger at me like that.

THE COURT: I just want to make sure that you know what you are doing, that you could be doing something that is possibly dangerous.

MR. LEVNER: Can we have a side bar?

MR. GOLDBERGER: I will join in that request for a side bar. I don't know where Mr. Levner is going.

THE COURT: I don't know where he is going, either.

MR. GOLDBERGER: Could we have a conference with counsel?

MR. LEVNER: Your Honor, I will withdraw it to avoid a conference with co-counsel.

I have no further questions.

THE COURT: Anybody else have any questions?

Step down.

MR. FELDMAN: I can certainly communicate with my office in an attempt to contact her. I don't really aniticipating contacting her at home. I am sure she is in fact on her way.

I am advised further by counsel here that he has apparently spoken to Mr. Goldberger and Mr. Goldberg advised him that Miss Barber has no home phone, but we will make every effort to have her here, so as not to interfere with the orderly proceedings, your Honor, we have certainly no objection on the part of Miss Barber to continue the trial.

THE COURT: All right, we will.

This evidence to the best of my knowledge, unless I am to be shocked and surprised, has nothing to do with Miss Barber.

MR. FELDMAN: That is basically why we are agreeing.

May I be excused to make some calls?

THE COURT: There is a phone in the robing room.

MR. LEVNER: This is the second occasion I am advised certain jurors have seen my client and possibly other clients in handcuffs.

I am constrained at this time, but for the

record, I would move for a mistrial on behalf of Mr. Ramsey for those very reasons.

MR. SCHMUKLER: My client was among the defendants who was viewed in handcuffs this morning by members of the jury.

THE COURT: This was on the third floor?

MR. CIAMPA: So was mine.

MR. WEISSFELD: This was a common occurrence.

THE COURT: Not that the jury saw them.

MR. WEISSFELD: There was only four jurors involved as far as I know.

THE COURT: Does anyone know who the four jurors were?

MR. LEVNER: On this occasion four jurors saw.

MR. ENGEL: Your Honor, the Government opposes the motion for a mistrial on the basis of -- I believe to set the record straight, I would like to comment on Mr. Levner's statement that his client was seen twice in handcuffs. I don't believe that was the case. There was a case when the four defendants in custody were brought into the court and there was complaint about that, but there were no handcuffs on at that time to my recollection.

Secondly, I would like to make inquiry of the

marshals who are present in order to see whether we can determine which jurors, if any, saw them, what the positions and so forth were, and I would like to make inquiry of the marshal and report further to your Honor.

THE COURT: Okay.

You haven't heard about this until now?

MR. ENGEL: No.

MR. LEVNER: Perhaps we can supply the name of the marshal in the first incident to the U.S. Attorney and the Court.

They were taken into the elevator here.

THE COURT: YOu guys make it as easy as you can on each other so I can find out what the blazes went on.

MR. SCHMUKLER: I am constrained to say it is harmful to the defendant Hansen that he should be viewed in handcuffs in view of the evidence here presented by the Government.

MR. LEVNER: Your Honor, I think it would take a moment because the marshals are present.

THE COURT: They change approximately every half hour.

MR. LEVNER: The marshals are present.

THE COURT: I know they are present, Mr. Levner,

but they change approximately every half hour. They have biological functions that they feel they have to take care of from time to time.

MR. LEVNER: The marshals that brought in my client and the other defendants into the courtroom are present right now.

THE COURT: Great.

Mr. Engel, go talk to them and find out what is going on.

You have ten minutes to find out.

(Recess.)

(continued on next page.)

End 1B

Tk 2A

(In the robing room.)

MR. ENGEL: Your Honor, I have requested this meeting in the robing room because the marshals who accompanied the prisoners earlier this morning are in the courtroom and must remain there.

During the break I talked with Willie Brown, the deputy United States Marshal, and Francisco Lopez, a deputy United States Marshal, and to the events of this morning.

They informed me that they were taking the prisoners up the back elevators which run next to the Magistrate's Court and after getting the prisoners on the third floor from the MCC they went back to that elevator.

Now, at that elevator -- it is a very small elevator and room for perhaps five or six people comfortably.

On the third floor there are no lights to speak of at all, very dark.

I went down there in person and inspected it just now.

On that elevator to the best of the marshal's recollection Juror No. 8 and Juror No. 10 -- 9 and 10,Mrs. Moses, in any event, and the black lady in the rear were

on that elevator at that time. They reported to me that Magistrate Raby of this courthouse was also on that elevator.

Willie Brown said, and Lopez confirmed this, that Mr. Lopez was standing directly in front of the elevator when the door opened. I believe off to the side and slightly behind him were the defendants Ramsey and Taylor and Willie Brown was also -- he was in the neighborhood. I don't know exactly where he was.

In any event, the other taller black marshal was behind those defendants, according to the marshals. The defendants Hansen and Turner were not visible at all from the elevator.

I then interviewed Magistrate Raby. He was kind enough to leave the conference. He was conducting a civil matter.

I asked him whether he took that elevator this morning, and he said yes.

I said, do you recall stopping on the third floor?

He said yes.

I said, did you see anybody on the third floor? He said no.

I prodded a little bit and asked him whether he

remembered seeing a marshal, and he said yes, he remembered seeing a Hispanic marshal with a long moustache. I think that was obviously the deputy Francisco Lopez.

I said, did you see anything else or anybody else?

The answer was no.

Magistrate Raby was standing in front of the elevator according to what he told me and the women of whom he only recalls Mrs. Moses, who got out on the sixth floor with him were standing behind him. He does not recall seeing Taylor and Ramsey at all, or any black defendant, and does not recall seeing handcuffs.

As I say, the doors on that elevator are very narrow and I doubt very much whether anyone could possibly have seen the handcuffs, much less the defendants.

As I say, Magistrate Raby is as near to an impartial observer as one could possibly find.

That is what he has represented to me and that is what I pass on to the Court.

The Government's position, therefore, is no prejudice is inured to these defendants and that it is extremely doubtful that these defendants were seen and there is no need for a hearing on these events.

MR. CIAMPA: May I be heard, your Honor?

THE COURT: Sure.

MR. CIAMPA: As to Magistrate Raby, I don't think that Magistrate Raby is in the same position as a juror in this case.

First of all, Magistrate Raby would not leap at a recognition of any defendant in this case, nor was he looking for any defendant in this case. I know myself having sat for now -- this is the seventh week -- when you see someone you have been watching in silence for seven weeks and you see them somewhere else, there is an immediate recognition and a heightened perceptual acuity, where that would not be the case with Magistrate Raby, who was just on the way to work.

The jurors in this case are not in the same position at all. The jurors in this case when that door opened, if they saw defendants that they have been starting at for now six and a half weeks, I think might make more careful observations than Magistrate Raby. Their curiosity is at a different level than Magistrate Raby's. I don't think think that his interview with Mr. Engel as to what he saw is in any way extendible to what the jurors saw.

MR. ENGEL: Your Honor --

MR. CIAMPA: Mr. Turner is here, your Honor. We could as him.

MR. WEISSFELD: I was going to suggest that, your Honor.

THE COURT: Go ahead.

DEFENDANT TURNER: When the elevator doors opened, it opened very wide. It is dark in the hall. It is very obvious we could see all the jurors very plainly and very clearly. The marshal was standing to the left. The gate was opened very wide. He couldn't possibly -- we were stepping in. It was very obvious he would have to see them. It iwas three jurors. I didn't see the other -- the fourth person. I wasn't in the position to see them. Ramsey and whoever the other -- I think it was Taylor -- was definitely right in visible view.

MR. CIAMPA: Mr.Taylor informed me there was four jurors, not two, and that Number 7 was there.

DEFENDANT TURNER: They were all shocked, the expression on their face. They looked just as shocked as we were to see them.

MR. ENGEL: Your Honor, I am not saying that the doors were not opened wide. I am saying the doors themselves are narrow. I wish to also make clear that

DEFENDANT RAMSEY: One witness is Cornelia --

the lighting situation inside the elevator may be light, but the light outside is very dark indeed.

I just want to clarify those points.

MR. LEVNER: May I be heard for a brief moment, your Honor?

THE COURT: Sure.

(continued on next page.)

End 2A

MR. LEVNER: We have not addressed ourselves to the initial problem of this being the second incident in which jurors have seen the prisoners -- the defendants being taken into the courtroom with handcuffs.

I advised Mr. Engel when I made this motion before the Court that there were two occasions, and I again spoke to Mr. Engel in the back of the courtroom, describing one of the marshals who on the first occasion was present when a juror saw Mr.Ramsey, Mr. Turner, Mr. Taylor and Mr. Hansen handcuffed.

MR. ENGEL: Your HOnor, I'm sorry to belabor this.

The prior incident was an incident which happened in the courtroom when the defendants were led in one after another. There were no handcuffs. The objection was there were other people.

Your Honor I think very carefully observed the other marshals at that time were black and indistinguishable from the defendants.

MR. LEVNER: That is not the incident I'm referring to, although that did occur. I'm talking about the main set of elevators when court was held on the first floor in Room 110.

MR. ENGEL: I don't remember that.

MS. PIEL: Point of information, your Honor, since I have an incarcerated defendant. What are the rules?

MR. ENGEL: May I be heard on that, your Honor?

I think that the marshals are so careful about this that I think it's a point well-taken.

What happens, as your Honor probably is aware, the defendants, when they are brought over from the MCC, are kept in a staging area on the third floor of this building and then brought around to the back, to the magistrate's elevator, brought up in the magistrate's elevator, and then brought all the way around by Judge Griesa's chambers on the 6th floor away from the jury room, which is the other way from the elevator.

Each time, when they go around the corner, especailly when they come into this area outside the courtroom here, a marshal is sent forward to make sure that no jurors are present, and at that point the handcuffs are taken off and the prisoners are led into the court.

MS. PIEL: Was this a change, what happened with regard to this elevator, or is this the elevator that the jurors use regularly?

MR. ENGEL: I don't know whether the jurors use it regularly or not. I can only say that the marshals

use it regularly, and I am frankly surprised the jurors have used it because I don't think it is open to the public or, in any event, it shouldn't be.

MS. PIEL: Are you referring to the elevator which is on the other side?

MR. SIFFERT: This is not the Pearl Street elevators, it is not the main elevators.

THE COURT: This is the elevator down on the east side.

MS. PIEL: How do the jurors get there?

THE COURT: Mr. Dilberian, did you point out to the jurors that elevator?

THE CLERK: They were transported in that elevator, your HOnor, when we moved down to the ground floor.

THE COURT: To the first floor?

THE CLERK: Yes. That was to avoid contact with the defendants in this elevator.

THE COURT: That is the only time you pointed it out to them?

THE CLERK: Yes, your Honor.

MS. PIEL: Were they told they weren't supposed to use it?

THE CLERK: No.

THE COURT: Okay.

MR. CIAMPA: It's not a question of whose fault. It is only a question of prejudice.

THE COURT: I understand. I am not going to point a finger at anybody.

The very fact that the defendants may be brought in in handcuffs, I don't think is sufficient to prejudice the jury. Various motions for a mistrial are denied.

Take a look at what happened in United States v. Bentvena.

MR. CIAMPA: May we have an instruction then, Judge?

MR. LEVNER: Let's think about that. Can we just think about that?

THE COURT: Sure. Go ahead.

(Pause)

MR. CIAMPA: Your Honor, I have an instruction for my client, Taylor. Apparently he was quite visible and in handcuffs.

The instruction I would request is that not all of the defendants are financially able to meet their bail and the fact that they might have appeared to some members of the jury in handcuffs is not to -- they are not

to draw any inferences from that except the fact that the particular defendant, Taylor, was unable to financially meet his bail.

MR. ENGEL: The Government objects to such an instruction.

MR. SCHMUKLER: May I request an instruction to the jury?

I think the language is similar to that that has been given in other cases, to the effect that the jury is not -- should they learn through any means that any defendant is in custody -- the jury is not to take that as evidence of his guilt or hold it against him in any way.

MR. WEISSFELD: With respect to Turner, your Honor, respectfully submitted as Mr. Schmukler indicated.

MR. LEVNER: I will vote for Mr. Ciampa's suggestion.

MR. CIAMPA: I don't think that would be enough, Judge, in this case, because I think that the jury -- we all recall from the selection, they are unsophisticated. This, in many cases, is their first criminal trial. Especially the jurors who saw my client, as I recall from the voir dire, have no criminal experience.

I think that we professionals tend to impute

some of our understanding of the procedures to the jurors.

I ask for that instruction because I think that, first of all, these particular jurors may not even understand the concept of bail. They may somehow think my client is more dangerous or something, that he has to be shackled.

I think that a very basic instruction, simply that some of the defendants are on bail and some are not. Those who are not are unable to afford bail and they are in custody and you are not to infer any guilt or innocence from that.

Otherwise it becomes a purely technical instruction and I don't think it erases the onus of what they saw.

THE COURT: I hear you.

MR. ENGEL: You hear me, too, Judge.

THE COURT: Yes, I hear you both.

Mr. Goldberger, is your client here?

MR. GOLDBERGER: Not yet, Judge. I just walked in myself. I apologize to the Court.

THE COURT: Don't apologize. You asked to be let go this morning and I let you go.

MR. GOLDBERGER: I have no excuse for her, Judge. I don't understand it.

THE COURT: Don't worry about it.

MR. CIAMPA: That's really the crux of the matter.

THE COURT: Wait a second. Don't worry about it.

If no one is here on Monday, everybody rests.

MR. LEVNER: Just for the record --

MR. ENGEL: Mr. Levner made a request of me yesterday about Christine Green. I am attempting to find out where she is. She is a girl that Miss Ellis testified was present on a trip that she took with Mr. Ramsey up to New York from Washington. I don't know where she is.

The Ellis' phone has been delisted, and Miss Ellis is in a place unknown. I talked to her last night. It slipped my mind. She is supposed to call me back this afternoon.

Finally, Mr. Nolan, a witness that Mr. Schmukler wants to call as his witness, as I understand, is en route to the courtroom right now.

THE COURT: He is? Where is he?

MR. ENGEL: He was on the air, which is the phrase in the Drug Enforcement Administration. I made a call just before we retired to the robing room. I would like to make another call to see whether that

Other than this, does anybody have any witnesses?

MR. LEVNER: Yes, sir.

THE COURT: You do?

MR. LEVNER: She was to arrive in Mr. Engel's office this morning. I understand she didn't.

May I go back in the witness room and see if she is here?

THE COURT: Certainly.

Have you talked to this witness yet?

MR. LEVNER: Not yet.

THE COURT: Go back and talk to her right now.

Anybody else?

MR. MATEDERO: I have to ask the Government with respect to Manoda Clagget.

THE COURT: I got a copy of the telegram.

MR. MATEDERO: I don't see her here.

THE COURT: Is Miss or Ms. Manoda Clagget here?

Go check in the witness room.

MR. ENGEL: Your Honor, I have checked with the marshals and they have no word on Garner. Deputy James Barefoot said he would check and call me in the

courtroom.

(Pause)

THE COURT: Mr. Matedero, have you checked in the witness room to see if your witness was there?

MR. MATEDERO: I did. She is not there.

THE COURT: Mr. Levner, have you talked to your witness?

MR. LEVNER: Yes. One. That witness will not be used.

The second witness, I did have a conversation with Tom Engel. Tom requested she and her mother come down to court. They advised Mr. Engel they were coming to court this morning and I don't believe Mr. Engel saw either party visually today.

THE COURT: Is that correct?

MR. ENGEL: Yes.

I believe the witness Mr.Levner is referring to as being in the witness room is James Kelly.

MR. LEVNER: Correct.

MR. ENGEL: He will not be called?

MR. LEVNER: Correct.

MR. ENGEL: On Friday afternoon I sought to find out the whereabouts of Christine Green and found out she resided in Westchester County, and I got on the phone

to her mother. I said Christine was needed as a witness in federal court, that I was under an obligation to find out where she was and to tell her to appear, and I told her mother that, I explained the circumstances, and for her to be in my office at a quarter of 10:00 this morning, and Catherine Green and her daughter did not appear.

I told her as I told Mr. Levner on Saturday when I spoke to Mrs. Green I told her I am not subpoenaing her, I can't force her to attend unless I subpoena her, and I told her unless she is subpoenaed, it is her right not to appear, but I told her I would like her to appear, and she said she would.

THE COURT: Let's back up.

How long, Mr. Levner, have you known of the existence of Christine Green?

MR. LEVNER: By that name, not until Thursday of last week. By the name of Christine, since three weeks ago. I had no last name. I have never received her address nor telephone number.

Might I suggest, your Honor, if I were permitted to use the phone, I would call Mr. Engel's waiting room and it's very possible, since it's 10:30 now, she might be in the waiting room.

THE COURT: Don't look at that clock. They

shut off the electricity here for two days.

MR. ENGEL: I might have more success with the receptionist than Mr. Levner.

THE COURT: I would hope so.

The phone is there. Use it.

By the way, to the best of your knowledge, Mr. Ivan Fisher still represents Mr. Warren Robinson?

MR. ENGEL: Yes.

THE COURT: Issue a bench warrant for Mr. Ivan Fisher and execute it.

(Continued on next page)

report and once again renew my application. My client informs me that Juror No. 7 saw him in manacles this morning.

MR. SCHMUKLER: My client informs me the same thing.

THE COURT: Stand up.

You are without a doubt one of the most contemptuous persons that I have in my entire life met.

Mr. Schmukler, you won't even stand now?

MR. SCHMUKLER: Yes, I will, Judge. Considering how long it would have taken me to stand and sit to make that brief statement, I didn't believe your Honor would take offense. If your Honor does take offense, I respectfully apologize.

While I am standing, I will move at this time for a mistrial on the grounds your Honor is depriving the defendant of producing evidence in his own behalf --

THE COURT: Motion denied.

MR. MATEDERO: Your Honor, I don't know how to put this. I most respectfully request a continuance for 24 hours to find Manoda Claggett. This is a person under Government subpoena that could give very valuable testimony to the defense.

THE COURT: We can go go on with continuances

[3479]

MR. MATEDERO: Respectfully except.

THE COURT: Everybody excepts to that.

MRS. PIEL: I want to except on the specific grounds of wishing not a continuance for 24 hours, but a continuance for an opportunity to speak to Mr. Curry who has been brought up from Atlanta, I understand, at my request.

THE COURT: Is he here?

MR. ENGEL: Yes.

THE COURT: Where is he?

MR. ENGEL: In the MCC.

THE COURT: Get him over here now.

MR. ENGEL: Yes, your Honor. I ordered him on Friday. I want the record to reflect that.

THE COURT: Get him over here now and tell them right now.

DEFENDANT RAMSEY: Your Honor, I don't understand fully about what you are saying that the defense rests, but I am innocent in this case and I would like an opportunity to have my witness in order for me to prove my innocence.

THE COURT: Who is your witness?

[3480]

DEFENDANT RAMSEY: One witness is Cornelia -- Christine -- he had the name for three weeks and he had the address and telephone number, and he hadn't turned it over to my lawyer, and I certainly don't want to be washed down the drain with everybody else because there is dissension in here between the lawyers, the Court and the Government.

THE COURT: Mr. Ferguson --

DEFENDANT RAMSEY: I am Ramsey, your Honor.

THE COURT: I am sorry.

I have done my best to run a completely fair trial. I have ordered the Government to do more than normally is done. They have cooperated as far as I can find out to the best of their ability. There is nothing more I can do.

Is that witness coming over?

MR. ENGEL: Yes. Mr. Barefoot indicated he would bring him right over.

THE COURT: Now.

MR. ENGEL: I said right now.

THE COURT: Who was it,Barefoot?

MR. ENGEL: Yes.

[3481]

THE COURT: I will get him myself on the phone.

DEFENDANT RAMSEY: Your Honor, if I may say a few more things.

THE COURT: Yes.

DEFENDANT RAMSEY: You said the Government has cooperated. The Government hasn't made any effort to have my witness here and that has been three weeks. They have been on notice and even today my lawyer -- he just learned the last name. He doesn't even know the address and he has the address. He admitted in court he didn't file a subpoena, he asked her to come down and advised her at the same time that you have a right not to oome down.

That is certainly not fair in my defense.

MR. ENGEL: Your Honor, as I indicated Mr. Levner asked for Miss Green or mentioned Miss Green or mentioned the name Christine for the first time last week. I told him her last name in the middle of last week, I think Thursday is accurate, andon Friday I was able to establish contact with her mother.

She is only 19 years old, and her mother said she would come down here this morning.

I can't subpoena here, she is not my witness.

[3482]

THE COURT: I understand that.

I will be right back.

(Pause.)

(continued on next page.)

(In open court; jury absent.)

THE COURT: In view of the fact that we are presently awaiting a possible witness to be brought over from the Metropolitan Correction Center, we are going to take a break. Ten minutes.

That's it.

(Recess.)

(In open court; jury absent.)

THE COURT: Mrs. Piel, do you intend to put on this person, whoever it may be?

MRS. PIEL: I do not, your Honor. I have had an opportunity to interview Graton Curry. I am not going to use him as a witness. I appreciate the production of him.

With the exception of the stipulation that I wish to submit to the jury, the defendant Wesley rests.

THE COURT: All right. Get the jury.

MR. SCHMUKLER: The defendant Basil Hansen moves to reopen the defendant's case at this time to introduce a stipulation of which your Honor has previously been informed.

THE COURT: Sure. Stipulations we are going to put in.

MR. LEVNER: If your Honor please, I would like

to advise the Court two witnesses Charles Ramsey will call, the first being Mr. Kelly, who was produced only today. I spoke to him. He will not be used.

The second witness is a Christine Green. She is the niece of Ann Ellis. She accompanied Ann Ellis allegedly according to Ann Ellis' testimony to New York with Mr. Charles Ramsey and Mr.Kelly.

It is that witness I have particular interest in speaking to. I am going to refer to the record of March 19, 1976, which was Friday.

MR. ENGEL: Page?

MR. LEVNER: 3429.

"Mr. Engel: Mr. Levner made a request to me yesterday about Christine Green. I am attempting to find out where she is. She is a girl that Miss Ellis testified was present on a trip she took with Mr. Ramsey up to New York fromWashington. I don't know where she is. The Ellis phone has been delisted and Miss Ellis is in a place unknown. I talked to her last night, meaning Thursday. It slipped my mind. She is supposed to call me back this afternoon."

That is the reference I make to Miss Green. I again spoke to Mr. Engel Friday evening and again Saturday morning. He advised me and apprised me of the

conversation he had with Miss Green's mother similar to the statements he made to the Court earlier this morning.

I am hard pressed,your Honor. If I may obtain a phone number or any information, I shall have an investigator or process server, or if need be, myself, serve a subpoena on that woman.

MR. ENGEL: Your Honor, the facts essentially as laid out by Mr. Levner are correct. I only call attention to the fact that reference was made to Christine in Miss Ellis' testimony some two or three weeks ago, and he could have elicited from Miss Ellis the name of Miss Green at that time.

He did not. It was only as of last Thursday that he made any request of the Government whatsoever.

THE COURT: I was here.

Bring in the jury.

(Jury present.)

THE COURT: Ladies and gentlemen, the defense rested. The Government indicates to me they have one witness who is to be very short on rebuttal.

Is that correct?

MR. ENGEL: Yes, your Honor.

THE COURT: It better be very short.

After that summations will start, not today and

he allegedly went to New York City with Warren Robinson and Mr. Tace, and that he thereafter returned to Washington, D.C., with an unknown amount of heroin, and there was no further testimony as to whether or not he went to any particular location. He did not know the amount involved, nor did he testify as to where he obtained it, et cetera; in addition to which, he did not indicate he went in March of 1972.

I think th that testimony, your Honor, with respect to that overt act is insufficient, and I would respectfully ask the Court to consider striking Overt Act No. 26 with respect to my client.

THE COURT: Anybody else?

MR. LEVNER: Your Honor, I will be brief.

I would like to reiterate my position with respect to Christine Green. Her address, telephone number and county in which she resides has been supplied to me by the United States Government at about five minutes of 2:00 today.

Miss Green was not called by the defense and no inquiry was made about her, because it was subject to the connection of an individual by the name of Kelly. Kelly was requested to be brought up here in the third week of the trial. He was first produced at 9:30 this

morning. That is the reason for delay in calling Miss Green.

THE COURT: Okay. I understand your position.

MR. POLLAK: Very briefly, your Honor:

In addition to what your Honor terms the standard brilliant argument with respect to the conspiracy count --

THE COURT: Wait a minute. I didn't say the arguments were standard.

MR. POLLAK: I understand your Honor's position. Every conceivable argument was advanced.

THE COURT: The standard ones are not that good.

MR. POLLAK: With respect to Count 11, however, your Honor, I would like to draw the Court's attention to the fact that it was our position at the end of the Government's case that there was no knowledge shown or any evidence allowing an inference of knowledge -- allowing the jury to draw the inference of knowledge that Henry Salley transported the narcotics when he picked up Warren Robinson.

I would renew the motion to strike Overt Acts 25, which relates to the same thing as Count 11, 32 which relates to the alleged transaction with one Alvin, and No. 35 which alleges the transactions in New Jersey.

[3566]

You want to know what kind of requests are given for the Government?

MR. LEVNER: Your Honor, I have one further --

THE COURT: Stand up. I don't hear you when you sit down.

MR. LEVNER: If your Honor please, one request. I would like a charge where the Government or any party to this case has access, control or custody over an individual and fails to call that individual.

The jury can infer any inference it so chooses contrary to the Government's position with reference to a Miss Christine Green.

THE COURT: I understand.

MR. LEVNER: Prior to the closing of defense case, I stated to the Court on a number of occasions, Christine Green was an essential and material witness to the defense of this case. I will produce this afternoon an agent, an investigator that put that house under surveillance. The parties no longer reside at that apartment. That apartment has been empty for two days now and I think since the Government was the last party to speak to that witness, since the Government failed to give me the address, last name or known number of that witness, I think it is fai for me to comment on the failure of the Government to produc

that witness for the trial of this case.

THE COURT: There is a difference between you making an argument and me making a charge. Your request is denied.

Mr. Turner, do you know anything about what a closing argument is?

DEFENDANT TURNER: Not really, your Honor, but I will attempt to.

THE COURT: YOu have seen it done before?

DEFENDANT TURNER: Yes.

THE COURT: The argument is supposed to be restricted to the evidence and the inferences that can be taken from that evidence that came in at this trial, not at any other trial and not at any other place, and I don't want you to cross the bounds. I recognize that you are representing yourself and that this is pro se. The last thing you want for this jury to hear is me to start sustaining objections to what you are telling them. Argue whatever the evidence is, but don't argue anything else. Don't get involved in personalities -- personalities of witnesses, sure, but don't start saying Mr.Engel is a mean guy, so on and so forth. He is not, really.

Please keep yourself restricted in that way.

Have you been supplied at the MCC over here with

2 Copies Received

Date 9/3/76

Firm Hon. Robert B. Fiske, Jr.

By M Kowalski
Crim Clks office